

JOURNAL OF AFRICAN ELECTIONS



Volume 20 Number 2 Oct 2021

ISSN 1609-4700



9 771609 470006



Journal of African Elections

EDITOR

Denis Kadima

ARTICLES BY

Justin Willis

Nic Cheeseman

Gabrielle Lynch

Greg Mills

Hangala Siachiwena

Mwiza Jo Nkhata

Anganile Willie Mwenifumbo

Alfred Majamanda

Hoolo 'Nyane

Mamello Rakolobe

Victoria Lihiru

Limukani Mathe

Terence Tapiwa Muzorewa

Mark Nyandoro

Published by EISA
14 Park Road, Richmond, Johannesburg, South Africa

P O Box 740, Auckland Park, 2006, South Africa
Tel: +27(0)11 381 6000 Fax: +27(0)11 482 6163
e-mail: publications@eisa.org

© EISA 2021

ISSN: 1609-4700 (Print) ISSN 2415-5837 (Online)

v. 20 no. 2: 10.20940/jae/2021/v20i2

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the written permission of the publisher

Printed by: Corpnet, Johannesburg

Cover photograph: Reproduced with the permission of the
HAMILL GALLERY OF AFRICAN ART, BOSTON, MA, USA



EDITOR

Denis Kadima, EISA, Johannesburg

MANAGING EDITOR

Heather Acott

EDITORIAL BOARD

Chair: Denis Kadima, EISA, South Africa

Cherrel Africa, Department of Political Studies, University of the Western Cape, South Africa

Jørgen Elklit, Department of Political Science, University of Aarhus, Denmark

Amanda Gouws, Department of Political Science, University of Stellenbosch, South Africa

Roukaya Kasenally, Department of Social Studies, University of Mauritius, Mauritius

Abdul Rahman Lamin, UNESCO Regional Office for Eastern Africa, Nairobi, Kenya

Tom Lodge, Department of Politics and Public Administration, University of Limerick,
Ireland

Khabele Matlosa, Political Affairs Department, African Union Commission

Roger Southall, Department of Sociology, University of the Witwatersrand, South Africa and
Research Associate in Political Studies, University of Cape Town.

The *Journal of African Elections* is an interdisciplinary biannual publication of research and writing in the human sciences, which seeks to promote a scholarly understanding of developments and change in Africa. Responsibility for opinions expressed and for the accuracy of facts published in papers, research notes, review articles and book reviews rests solely with the individual authors or reviewers. Contributions are referred to specialist readers for consideration, but the Editor is responsible for the final selection of the contents of the Journal.

Editorial correspondence, including manuscripts for submission and books for review, should be sent to:

The Managing Editor, Journal of African Elections

EISA: P O Box 740

Auckland Park 2006, South Africa

Tel: +27(0)11 381 6000 | Fax: +27(0)11 482 6163 | e-mail: jae@eisa.org

Business correspondence, including orders and remittances, subscription queries, advertisements, back numbers and offprints, should be addressed to the publisher:

The Publications Department, Journal of African Elections

EISA: P O Box 740

Auckland Park 2006 South Africa

Tel: 27(0)11 381 6000 | Fax: +27(0)11 482 6163 | e-mail: publications@eisa.org

Abstracts for previous issues are available at:

<https://www.eisa.org/jae.php>

CONTENTS

| | |
|---|-----|
| THE HISTORY OF ELECTIONS IN GHANA, KENYA AND UGANDA What We Can Learn from These ‘National Exercises’ <i>Justin Willis, Nic Cheeseman and Gabrielle Lynch</i> | 1 |
| THE PLOUGH AND THE KALASHNIKOV Ethiopia After the Elections – and Tigray <i>Greg Mills</i> | 26 |
| A SILENT REVOLUTION Zambia’s 2021 General Election <i>Hangala Siachiwena</i> | 32 |
| THE NULLIFICATION OF THE 2019 PRESIDENTIAL ELECTION IN MALAWI A Judicial Coup d’État? <i>Mwiza Jo Nkhata, Anganile Willie Mwenifumbo and Alfred Majamanda</i> | 57 |
| WOMEN’S REPRESENTATION IN LESOTHO’S LEGISLATIVE BODIES A Politico-Legal Analysis of the Effectiveness of Electoral Gender Quotas <i>Hoolo ‘Nyane and Mamello Rakolobe</i> | 81 |
| THE 2020 CHADEMA SPECIAL SEATS DISPUTE IN TANZANIA Does the National Electoral Commission Comply with the Law? <i>Victoria Lihiru</i> | 102 |
| PARTY NOMINEE OR INDEPENDENT CANDIDATE? Examining Electoral Reforms and the Use of Digital Technologies for Voter Participation in South Africa <i>Limukani Mathe</i> | 120 |
| THE RURAL ELECTORATE IN ZIMBABWE’S ELECTIONS 1980-2018 Consciousness and Voting Preferences <i>Terence Tapiwa Muzorewa and Mark Nyandoro</i> | 141 |

THE HISTORY OF ELECTIONS IN GHANA, KENYA AND UGANDA

What We Can Learn from These 'National Exercises'

Justin Willis, Nic Cheeseman and Gabrielle Lynch

Justin Willis is Professor of Modern African History,
Durham University

Nic Cheeseman is Professor of Democracy,
University of Birmingham

Gabrielle Lynch is Professor of Comparative Politics,
University of Warwick

ABSTRACT

A large literature has described the years after independence from colonial rule as a period of 'departicipation'. Africa's new rulers – whether driven by personal venality or a sincere commitment to nation-building – swiftly gave up on elections, or at best held elections that, by denying choice, left violence as the central dynamic of African politics. This article draws on the cases of Kenya, Ghana and Uganda in the late 1960s to argue that the emphasis often placed on the 'speed and ease' of this process has been overstated. Instead, Africa's politicians and civil servants valued elections as a means to educate and discipline the public, even as they feared their possible outcomes. Building on a literature that focuses on the individual experience of elections rather than the presence or absence of parties, we argue that the rhetoric of politicians and civil servants shows that they saw elections as 'exercises' – a revealing term – that would train and test their new citizens. Yet this is not the whole story: voters understood their participation in their own terms and played a role in how early experiments with elections played out. The political closures of these years were real, but their course was unplanned and contingent, shaped partly by popular involvement. These points are not only of historical value, but also provide important insights into the extent to which contemporary elections are instruments of elite power or the drivers of democratisation.

Keywords: elections, independence, participation, citizenship, voting, Kenya, Ghana, Uganda

INTRODUCTION

In 1966, a few months after the overthrow of Ghana's first president Kwame Nkrumah, one of the men who had led the coup published a justificatory book. The author, Akwasi Afrifa, revealingly chose to publish this work in the UK. He and his fellow members of what they called the National Liberation Council (NLC) were acutely aware of international scrutiny, and absolutely clear that in – a Cold War context – they were aligned with the West. The book presented Nkrumah as a demagogue who had torn up the constitution: 'the coup was necessary to save our country and our people' (Afrifa 1966, p. 37). Kofi Busia, one of the leaders of the opposition party banned by Nkrumah, contributed a preface praising Afrifa as 'a citizen with an impassioned faith in the value of democracy', describing the book as 'a challenging defence of democracy' (Afrifa 1966, pp. 9–10). The book made much of the flagrant rigging of a referendum in 1964 which had made Ghana into a one-party state, and the 'elections' of 1965 in which no ballots were cast since every candidate was nominated, unopposed, by Nkrumah's Convention People's Party (CPP). This was the logic for the coup: as Afrifa boldly declared 'we will stand against anything undemocratic' (Afrifa 1966, p. 107).

The book had rather less to say on the elections of the 1950s, in which the CPP had repeatedly and resoundingly defeated a succession of opposition parties with which Busia had been associated. Afrifa briefly explained those defeats as the consequence of a lack of education: 'Kwame Nkrumah played hard on the illiteracy of his fellow men and women, marshalling the majority of the 80 per cent illiterate citizens around himself [at] independence' (Afrifa 1966, p. 54). Yet that explanation left Afrifa and the NLC with a problem: if they were committed to elections as the basis of democracy, how could they prevent the rise of another demagogue like Nkrumah?

Afrifa's dilemma was a particular version of a much wider challenge. Some scholars have described the years after independence from colonial rule as a period of 'departicipation'. Africa's new rulers – whether driven by personal venality or a sincere commitment to nation-building – swiftly gave up on elections altogether, or at best held elections that, by denying choice, left violence as the central dynamic of African politics (Coleman & Rosberg 1968, p. 8; Huntington 1965; Kasfir 1976; Lewis 1965; Zolberg 1968, p. 86). As we will show, the emphasis placed by some on the 'speed and ease' (Coleman & Rosberg 1968, p. 664) of this process may be overstated, for Africa's politicians and civil servants valued elections as a means to educate and discipline the public, even as they feared their possible outcome.

In revisiting the history of these years, we are motivated partly by more recent electoral history. Since the 1980s, the uncertain outcome of the reintroduction of multi-party elections – initially hailed by some as a 'third wave of democratization'

(Huntington 1991) – has revived debate: can elections change the nature of politics (Young 1996)? This has reprised the arguments of the 1950s and early 1960s. These pitted Seymour Martin Lipset's (1959) classic argument that the 'social requisites' (notably wealth and education) for democracy were lacking in Asia and Africa against the cautious hopes of William Mackenzie (1958) or Edward Shils (1960), that multi-party elections would embed liberal state authority. The contemporary debate has again set optimists, who still see the possibility that elections and a particular set of liberal values will become locked in a virtuous cycle (Lindberg 2006), against sceptics who argue that liberal democracy is a Western import, that may be simply impossible in current circumstances (Collier 2009) – or that the ballot is in itself not enough to achieve the social and economic transformation needed for true democracy (Nzongola-Ntalaja 2006). Critical voices suggest that elections will either lead to violence or create an electoral façade for authoritarianism (Levitsky & Way 2002; Ninsin 2006). For the current protagonists of either view, the story of the 1960s appears as no more than a prologue: evidence of the premature stifling of liberal possibility or early confirmation that elections are either unsuitable or are too easily appropriated by entrenched interests. We argue that a closer look at the debates and events of the 1960s can make a valuable contribution to contemporary conversations.

Our re-examination of the debates of the 1960s draws also on a rather different literature on elections in Africa and elsewhere – largely from historians and social anthropologists – that has taken the individual experience of elections, not the presence or absence of parties, as its focus (Bertrand et al. 2007). Echoing nineteenth-century critics (and picking up on an argument made by Stein Rokkan (1961)), this literature foregrounds the moment of individual choice – secret but public – as central to an individualisation of politics. The ballot, it is argued, extracts people's political lives from the multiple social communities in which most live as church-goers, family members, or professionals. In offering choice and political involvement, the ballot also limits these to that one moment. 'Electoral citizenship', Alain Garrigou (1992) argued, changed how voters thought about their relationship to the state in France; in England, the nineteenth-century electoral reforms engineered what James Vernon (1993, p. 250) has called a 'disciplining and closure' of public politics. That approach resonates with 1970s studies (Hyden & Leys 1972) of the 'elections without choice' (Hermet et al. 1978) that had become common in Africa. This work suggested that, far from being irrelevant vestiges of a lost liberal moment, these ballots consolidated the role of adult suffrage, under close control, as an instrument of elite power. Adult suffrage, it was suggested, was both 'educational and anaesthetic' (Hermet 1978, p. 14), allowing a controlled participation that would strengthen state institutions, rather than overwhelm them.

As we will show, the rhetoric of politicians and civil servants in the 1960s shows that they really did see elections as ‘exercises’ – a revealing term – that would train and test their new citizens. This is not the whole story, however. Recent research on Africa, and other parts of the world, argues that voters’ involvement in elections does not lead straightforwardly to an individualised, private politics that abstracts people from society (Banégas 2007; Bertrand 2007; Lawrence 2009). Voters may understand their participation on their own terms, and even controlled elections may lead politics in new directions. The social meanings of electoral behaviour – like the meaning of the word ‘democracy’ itself – are neither universal nor readily predictable (Schaffer 1998).

We draw on those insights here to revisit elite debates over elections in the late 1960s, drawing on the experience of Ghana, Kenya and Uganda to reveal something of the variety of forms and paths which these conversations took in Anglophone Africa. First, by asking what Africa’s new rulers sought to achieve through elections, and what kinds of election they imagined, we show that one-party rule was by no means a straightforward answer to the challenges facing the new leaders of independent Africa. There was, as Staffan Lindberg (2006, p. 11) has pointed out, ‘interesting experimentation’ in elections in these years. The course of this experimentation was contingent, tentative and uncertain, with the subsequent political closure taking diverse paths and forms.

Second, we suggest that this experimentation may be understood as a precursor to the emergence from the 1990s of what is often now called ‘electoral authoritarianism’ (Schedler 2006). Politicians and civil servants sought to manage and control electoral outcomes – and to secure or maintain power for themselves – in multiple ways. Yet our third point is that we should beware crediting politicians and civil servants in the 1960s, or more recently, with more foresight or control than they possess.

The focus of this article is on elite debates – the preserve of the educated minority, very largely male, who dominated politics and civil service employment. But the public were a constant presence: whether voting or abstaining, cheering at rallies or listening in sullen disapproval. Schemes of electoral discipline became entangled with popular aspirations that involved multiple ideas of community; powerful as the language of decolonisation and nationalism may seem, national citizenship was not the only way for people to make claims in Africa in these years (Ndegwa 1997). This was a time of hopes, frustrations and suspicions about the state, citizenship and the promise of prosperity; the political closures of these years were real, but their course was unplanned and contingent, shaped partly by popular involvement (Cooper 2012).

'YOUR VOTE IS YES': DISCIPLINE, INDISCIPLINE AND SINGLE PARTY RULE

In focussing on Ghana, Kenya and Uganda, we do not mean to imply that these countries represent all of Africa, nor that they were closely connected – though Kenya and Uganda are neighbouring countries, and Nkrumah did make a determined effort to influence Ugandan politics (Agyeman 1975). They are chosen rather to show what different paths these debates might take. All three countries shared the fundamental legacy of colonial rule: a political system rooted in racial difference and violence, mediated by the late-colonial obsession with economic development. In all, the government's payroll had grown rapidly since the late 1930s, as had the formal structures for the regulation of trade, health, agriculture and almost every other aspect of life. An emergent African cadre of state employees took up the assumptions and the self-appointed duties of the late-colonial 'modernizing bureaucrats' (Cooper 1997). All three countries came to independence with parliamentary systems based on first-past-the-post constituency elections, and with a volatile combination of high popular expectations and recent experience of mass political mobilisation.

There were significant differences, however: Ghana became independent in 1957, earlier than most sub-Saharan African colonial territories, and its new leaders were both empowered and burdened by an especially strong sense that they were on show to the world, an African example. '[W]e are on a conspicuous stage', Nkrumah told Ghana's parliamentarians at independence, echoing Edmund Burke, 'and the world marks our performance' (Nkrumah 1957, p. 4). Uganda and Kenya, on the other side of the continent, became independent in 1962 and 1963 respectively. The first rulers of independent Ghana and Uganda were radical, pan-Africanist and anti-imperialist in their rhetoric, and their relationship with the UK and US governments was increasingly tense (Austin 1970; Mutibwa 1996). In Kenya, by contrast, the bland avowal of 'African socialism' by Jomo Kenyatta's government was combined with a decidedly unradical economic policy and a continued close relationship with the west (Ochieng' 1989).

Beyond rhetoric and timing, there were other differences. Ghana was relatively prosperous at independence, its economy buoyed by small-scale African cash-crop production. Nkrumah was deeply suspicious of an established social stratum of traders, professionals and customary chiefs whose wealth and influence rested on that commerce and who were a powerful presence across Ghana – especially in the kingdom of Asante, where there was an incipient movement for autonomy (Rathbone 2000). Uganda was less wealthy than Ghana, yet the regional tensions were even more acute. The kingdom of Buganda was the economic and political centre of the colonial state, but its leaders had no commitment to a post-

colonial nation-building project that promised to spread wealth and power more evenly. Like Nkrumah, Obote saw himself as beset by internal enemies all too ready to make alliance with the forces of imperialism. In Kenya, independence had come after an anti-colonial insurgency and a counter-insurgency campaign that was brutal even by the standards of time, and which left power largely in the hands of those who had worked with the colonial state – albeit to their own ends – rather than fought against it (Branch 2009). Threats to Kenya’s existence came from its margins in the north and on the coast, not from its centre (Brennan 2008; Whittaker 2014). But in all three countries, the nationalists who took office at independence were all too aware that the nation had only a limited hold on the affections of the former colonial subjects who were now to be citizens.

African nationalism looked forward to the ‘nation of the future’ (Reid 2015); its enemy, even more than colonialism, was the proliferation of alternative political possibilities, for local ethnic patriotisms raised the possibility that there might be other future nations. Against those threats, elections by adult suffrage and the secret ballot – with their bureaucratic, territory-wide processes of registering, nomination, listing, queueing and counting – had made both the nation and its counterpart, the loyal individual citizen, briefly and tantalizingly visible at the end of empire (Willis et al. 2018). Elections drew together nationalist politicians and colonial officials who shared a strong awareness that they were subject to a sceptical international gaze.

In the wake of the formal independence which followed close on those polls, Africa’s new leaders pinned their legitimacy to the developmental transformation of African society. They demanded the support and commitment of populations whose own expectations of modernity were high. The challenge of early independence quickly resolved itself as one of discipline and order: how could people be persuaded that the future had been postponed until they, as citizens, could learn to work and behave in new ways? Nkrumah could tell the public in a 1961 New Year’s broadcast, that ‘I expect every one of you to be hard-working and law-abiding’ – but would they obey? Some of Africa’s new leaders made clear their doubts over the viability of elections in this context, fearing that they would compromise the unity that nationalism exalted and derail the work of development (Kaunda 1964). Across the continent nationalists worried that, as Grace Ibingira, a Ugandan politician, put it, ‘all politicians ... will be forced, in order to get votes from the common man... to speak in terms of tribe or religion’ (Kasfir 1976, p. 206). In similar vein Uganda’s vice-president, John Babiha (1967), commented ‘The remarkable results of hard work – don’t jeopardise it all with elections’.

Ibingira had cause to worry. Educational leaflets *Jifunze uraia* (1963, 1967) may have assured voters that to cast a ballot was to ‘teach yourself citizenship’. Yet in

late-colonial election campaigns they had behaved as both more and less than that. People whose experience of government had been shaped by the apparently capricious and violent colonial state sought moral political relationships through local and/or ethnic patrons, as Peter Ekeh (1975) has argued. Single-party rule readily suggested itself as a technique to manage this: elections could be held without the need for a political opposition which, as Kenyan nationalist Tom Mboya (1963, p. 657) put it, 'irritates the government, which is engaged in the work of nation-building' (also Nkrumah 1955; Nyerere 1960). Party names laid claim to the role of singular national movement: the Kenya African National Union (KANU), the Uganda Peoples' Congress (UPC). Yet experience soon showed that even single parties might lack the internal discipline and organisation to realise the dream of electoral order.

In Ghana independence had come in the wake of a clear electoral victory in 1956 for Nkrumah's CPP, against largely regional opposition parties that demanded a degree of devolution. Initially reluctant to hold that final late-colonial election, Nkrumah had then seized upon it as a demonstration to the world of Ghana's unity and readiness for self-government. After independence, he repeatedly turned to the ballot box as a way to demand public obedience: in 1960, there was a combined referendum/election on a new constitution and the choice of president; in 1964 another referendum on the introduction of one-party rule. During the former, Nkrumah told Ghanaians to 'do their duty' and 'vote in an orderly and disciplined manner' (Nkrumah 1961, p. 208); during the latter, voters were told that the referendum was a 'national exercise', 'in which all must play their part'. To vote was to be a good citizen, committed to development: 'when we vote yes we shall be voting ... for the speedy and tranquil development of our resources to the era of Work and Happiness for all.'¹ The popular response was less than wholehearted, especially in 1964 when, despite a reported overwhelming endorsement of single-party rule, rumours of rigging circulated widely.

Yet single-party rule proved not to be enough. Nkrumah had long suspected that some CPP members lacked zeal and commitment, and he had struggled to assert central control of the nomination process against the multiple local networks which actually constituted the CPP. In the elections of the 1950s, voters had overwhelmingly supported parliamentary CPP candidates and their promise of early independence. But those candidates had also relied on a very local politics of promise and reward, in which attentiveness to the particular needs of constituents and material generosity were prominent. Nkrumah came to suspect his own MPs as 'self-seekers and careerists' and announced that Ghana needed

1 See the header on the *Ghanaian Times*, 7 January 1964, p. 1; 'Dacko wants single party', *Ghanaian Times*, 11 January 1964, p. 1; 'Editorial: the people's democracy', *Ghanaian Times*, 10 January 1964.

‘a new type of parliamentarian’: ‘men of integrity and honesty of purpose’.² With elections scheduled for 1965, Nkrumah hoped for ‘sterner discipline at all levels’. But even with a single-party he feared that voters might choose, or be bribed into choosing the wrong representatives. After a brief build-up in which the government-controlled press made much of the national bureaucratic exercise of electoral preparation – the recruitment of staff, the demarcation of constituencies – the election was in effect cancelled. CPP candidates were chosen by a central committee and declared elected, unopposed. The CPP party newspaper hailed the ‘complete absence of corruption’, observing censoriously that in the past ‘the tendency had been for people seeking parliamentary election to indulge in unscrupulous practices using money to influence the electorate and thus buy their votes’ (*Evening News* 1965).

Nkrumah’s overthrow a few months later was through a coup, not a popular uprising. But the lack of popular resistance to the coup, and the apparent public jubilation that greeted it, allowed observers to draw discomfiting lessons about the consequences of abandoning elections (Mazrui 1966). In Uganda, Obote reportedly worried that Nkrumah had become ‘out of touch’ with the people; in Kenya, newspapers likened Nkrumah to Hitler and accused him of seeking to ‘insulate’ himself from the people.³ These judgements reflected local circumstances, as much as those in Ghana; for the coup in Ghana came at a critical moment of debate over the possibilities of party politics in both Uganda and Kenya.

Shortly after independence in 1963, Kenya’s main opposition party had dissolved itself and joined KANU; the country remained nominally multi-party, but there was no formal alternative to KANU. Yet by early 1966 chronic disputes were tearing that party apart, along lines defined by the intersection of personal, ideological and ethnic differences. Oginga Odinga, Kenya’s vice-president and the leader of a radical group within KANU that looked to a redistributive politics and nationalisation, had also become the voice of the Luo of western Kenya. Many Luo resented what they saw as the domination of government by an inner elite who were, like Kenyatta, Kikuyu from central Kenya. In a few dramatic weeks in early 1966, Odinga and his allies were effectively driven out of KANU and founded a new party, the Kenya People’s Union (KPU) (Gertzel 1970). That they were allowed to form an opposition party was significant: at the KANU meeting which saw the expulsion of Odinga, Kenyatta – who had previously expressed

2 Nkrumah’s concerns about incumbent MPs were long-standing: UKNA DO 195/10, ‘Osagyefo’s broadcast to the nation of 8 April 1961’. For 1965, see ‘Parliament dissolved’, *Evening News*, 25 May 1965, p. 1; ‘Editorial. Wanted: true Nkrumahists’, *Evening News*, 26 May 1965, p. 3; see also ‘Editorial: a historic day’, *Ghanaian Times*, 28 May 1965, p. 1.

3 UKNA FCO 31/713, Valedictory letter, Scott, British High Commissioner Kampala to Secretary of State for Foreign Affairs, 26 January 1970; ‘Editorial: The great debate’, *East African Standard*, 28 February 1966, p. 4.

a preference for the unanimity of one-party rule – declared that Kenya was not ‘ready’ for such a system as ‘our people value the basic freedoms entrenched in our Republican constitution’. Those freedoms, he argued, encouraged a discipline that was achieved out of self-control, and which was therefore superior to any imposed unity. In Uganda too, Nkrumah’s fall came at a critical moment. Obote had come to power as prime minister in 1962, just before Uganda became independent. The electoral victory of his UPC had rested on an entirely opportunistic alliance with the supporters of the *kabaka*, or king, of Buganda. The *kabaka* demanded a federal constitution and special status for his kingdom in an independent Uganda; Obote offered this, and made the *kabaka* the nominal president of Uganda after independence. The alliance was a fraught one, but so too was Obote’s relationship with his own party. Like Nkrumah – whom he lionized – Obote mistrusted the local big men whose networks and influence had given the UPC a presence across the country. Nationalists though they were in terms of political goals, their politics had relied at least in part on presenting themselves as trustworthy, moral, actors: members of local, sub-national, communities who shared a sense of proper behaviour, of obligations and responsibilities (Gertzel 1974, pp. 51-2, 77; Ocitti 2000, pp. 133-35). What has been called moral ethnicity (Berman et al. 2004) loomed large in the way that aspiring politicians mobilised support, in Uganda as elsewhere. Obote always suspected that such local moral logics were a threat to his vision of a national party that was truly committed to his vision of development and modernisation (Mujaju 1976). In 1966 he arrested some of his rivals within the UPC and used the army to abolish the Buganda kingdom and the federal constitution. He introduced a new constitution that made him president, and postponed elections while still insisting on the electoral basis of his own authority.⁴

Yet elections presented a challenge for Obote, as they had for Nkrumah. The problem was not the opposition Democratic Party (DP), which had been reduced to ineffectuality by defections and intimidation. Obote was so little concerned by it that the DP’s few remaining parliamentarians were allowed to retain their seats even after the party was nominally banned in 1969. Obote’s difficulties were with persistent hostility to his government from many in Buganda and from the local leaders of the UPC, whom he explicitly denounced as a privileged group of ‘tribalists’. In Obote’s view, dominance meant that any election would simply produce ‘an assembly of peace conference delegates’, each representing a different ‘tribal force’ (Obote 1970, p. 27). Obote sought to resolve this dilemma through a radical economic and political approach that would sideline these local big men.

4 US National Archives and Record Administration (NARA) RG 59 Central Foreign Policy files (CFP), Box 2258 POL 15-1, Stebbins, Kampala to State Department, 11 April 1967; ‘Felix Onama’s speech at West Mengo’, 9 February 1969, *Summary of World Broadcasts* (SWB) ME 2998 B/2; ‘Ochola’s address on internal “enemies”, 4 February 1970, SWB ME 3299 B/10.

To this end, he issued a 'Common Man's Charter', which promised large-scale nationalisations while demanding 'hard work by all'. The Charter – formally 'Document Number 2 of the Move to the Left' – emphasised the need for 'massive education' lest the 'misguided' be led astray by 'the well-to-do, the educated and the feudal elements' who 'serve the interests of foreigners'.⁵ Obote (1970, p. 14) went on to warn repeatedly of the dangers posed by 'tribal masters' who would use their wealth to become 'owners' of the Party, at a local level and so undermine the 'total involvement of the people in building national institutions'. Obote and his opponents within the UPC pursued their rivalry through a debate over the electoral system that rested on a shared premise: that voters were uneducated, and therefore susceptible to being misled. On the other hand, they agreed that 'elections serve a useful purpose in nation-building, in the mobilization of political consciousness'.⁶ Obote's solution to the dilemma involved the direct election of the national president in a yes/no vote with a single candidate, combined with a complex system of competitive but single-party parliamentary elections. Every candidate would have to compete with others in four constituencies – a base one, and three others spread across the country: the '1 + 3' system, as it was called. Victory required support across all four constituencies, so that candidates could not simply play to their own ethnic group and local allies (Obote 1970). The elections would become, as Obote put it, 'Operation Know Uganda', demanding a national approach from politicians as well as the public. Obote's critics – led by Felix Onama, the secretary-general of UPC – were sceptical of the '1 + 3' system, but focussed their opposition on the direct presidential election, arguing that the head of the party, chosen at the annual conference, should automatically be president. Reasonably enough, they saw Obote's plan as a device to assert his own absolute control over the party in the name of the popular will, though they expressed their concern through reference to popular ignorance rather than elite rivalry:

There is a grave danger in exposing the leader of a Revolution to an election before the Revolution itself is wholly understood by the masses . . . he might be compelled to start speaking in the language that is understood by the masses, and popular with the masses, which might not be the language of the Revolution.⁷

The debate over the election proposals was fierce (Willets 1975), despite the suspicion amongst diplomats inclined to overstate Obote's power, that Obote was

5 UKNA FCO 31/468, 'Common Man's Charter'.

6 'Representation of the People Bill', 10 November 1970, SWB ME 3532 B/1.

7 UKNA FCO 31/170, clipping from *The People*, 28 August 1970.

stage-managing it. Obote circulated thousands of copies of his proposals, printed as 'Document Number Five of the Move to the Left' and denounced those trying to put a 'barrier' between president and people. His supporters declared that 'we detect the crafty hands of reaction behind this move to shield you from the verdict of the masses', and argued that elections were key to popular mobilisation: 'for the revolution to succeed the people of Uganda as a whole must be involved'.⁸

Obote won the struggle, formally. By early 1971, an extraordinary party congress had approved the introduction of both the '1 + 3' system and direct presidential elections. Party elections for new constituency-level positions, closely supervised by Obote, had partly side-lined his rivals.⁹ But those party elections had also revealed the persistence of a political culture that defied Obote's vision of a disciplinary electoral citizenship. Those who emerged as winners had spent lavishly on gifts, entertainment and transport for voters; presenting themselves as leaders who were virtuous because they were accessible and generous to a local community, not because they 'knew Uganda'. 'Money has been invested liberally in the recent mini-elections'; complained one parliamentarian. There were allegations that the country had been 'flooded with money'; that voters were 'bought'; that 'some people get a lot of money which they can throw around without much problem'.¹⁰ 'How does one book all the hotels, bars, in the town?', demanded one aggrieved UPC member of parliament, 'How does one book all the transport means in the area?'. Meanwhile, it was rumoured that such local big men were making pacts with one another across regions, building alliances that would thwart the intention of the '1 + 3' system (Cohen & Parsons 1973).

The '1 + 3' elections never happened; they were forestalled by the coup of January 1971. That coup was propelled by Idi Amin's awareness that Obote intended to remove him from his role as head of the army; and Amin himself never held the elections that he promised when he took power. But Amin, initially at least, had the support of Onama and others in the UPC who were threatened by Obote's efforts to suppress the local politics of patronage on which their position as leaders rested. In Uganda, as in Ghana, the attempt to use one-party elections

8 'Obote on need to curb reaction', 22 August 1970, SWB ME 3465 B/1; "'People must elect the president'", *Uganda Argus*, 28 August 1970, p. 1; Otim Oryem, 'Uganda's part in the African revolution', *Uganda Argus*, 27 August 1970, p. 1; Ginyera-Pincwa, 'The impact of the election proposals', *Uganda Argus*, 28 August 1970, p. 5.

9 'Consideration by party of constitutional amendments', 15 December 1970, SWB ME 3562 B/1; 'Resolution of the Mbale UPC delegates' conference' 19 December 1970, SWB ME 3566 B/1; 'Obote's statement on UPC elections', 14 October 1970, SWB ME 3509 B/1; 'President appoints supervisors', *Uganda Argus*, 15 October 1970; UKNA FCO 31/713, Redshaw, British High Commission Kampala to Purcell FCO, 23 October 1970.

10 'Elections – this national duty', *Uganda Argus*, 12 November 1970, p. 4; 'Aftermath of the election', *Uganda Argus*, 6 November 1970, p. 3; 'Assure next polls', *Uganda Argus*, 16 November 1970, p. 6; 'Uganda's poll system "unique"', *Uganda Argus*, 11 November 1970, p. 4.

to mobilise the public as citizens had been complicated by a combination of the rivalries and ambitions of politicians, and the tension between two possibilities of elections: as exercises in civic virtue that performed the nation, or as opportunities for the expression of the mutual moral obligations of local patrons and clients.

MEN OF INTEGRITY: MANAGING THE VOTE BY LAW

In contrast to Nkrumah and Obote, Ghana's coup-makers were ideologically opposed to single-party rule. Their search for a means to control electoral outcomes and to avoid a return to what they called 'tyranny' (Ghana Constitutional Commission 1968, para 23, 28) – that is, rule by Nkrumah and his supporters – turned to other legal and constitutional devices.

The debate in Ghana was pursued very publicly; in newspapers, through a series of commissions, and finally through a constituent assembly, itself elected not by universal suffrage but indirectly, through local government and professional bodies. The tone was consistently and self-consciously learned and elitist, and the loudest voices here were those of Ghana's established elite, who prized their learning. The preferred points of reference were from Rousseau to Bryce, by way of Madison and Bagehot, European and North American philosophers and models. A commission expressly designed to advise on the constitution argued that the answer lay in ensuring the rule of law: 'the myth known as the sovereignty of parliament should be exorcized' (Ghana Constitutional Commission 1968, para. 72), with a strong president who was indirectly elected as the guarantor of the constitution against the foibles of directly-elected politicians. Elections were nevertheless necessary, because they had 'an educational value for the citizen' and parties should be allowed, because they would 'make opposition respectable'. But the danger that 'poor villagers' might be manipulated into voting for the wrong people meant that the constitution, not parliament, must be supreme (Ghana Constitutional Commission 1968, paras 396, 78-80, 295-96). Other commentators argued that parties themselves should be banned to encourage a national consensus; or that the number of parties should be controlled.¹¹ A commission on elections, which catalogued in colourful detail the electoral malpractice of the Nkrumah era, suggested controlling electoral outcomes by ensuring that candidates were all 'men of substance' and 'men of honesty and probity'. There should be property and education qualifications for candidacy, and politicians who had been associated with the CPP should be banned from holding elected office (Republic of Ghana 1967, pp. 15, 18, 22, 26-28). An indirectly-elected constituent

11 'No-party government will satisfy Ghana', *Ghanaian Times*, 6 July 1967, p. 7; Seth Debi-Dankwah, 'Politics without parties', *Ghanaian Times*, 6 September 1967, p. 6 and 'The quest for a new basic law', *Ghanaian Times*, 11 September 1967, p. 6; Letter, Kwadzo-Mensah, *Ghanaian Times*, 17 July 1967, p. 7.

assembly, which first sat in 1969 and whose members seem to have been primarily concerned with their own electoral prospects, finally approved a constitution only months before the elections. Former CPP politicians would be banned from standing and there would be a parliament chosen through multi-party elections, which would itself choose a president with limited powers (Luckham & Nkrumah 1975; Twumasi 1968).¹² Controls on candidacy would be combined with a longer-term process of civic education, centred on elections, which would help voters to exercise their choices responsibly.

The subsequent elections foregrounded that idea of education. The NLC had already created a National Commission for Civic Education (NCCE) in 1967, intended, in the words of the government-controlled press, to prevent the return of a 'government of nincompoops'.¹³ This soon came under the leadership of Kofi Busia, the erstwhile United Party (UP) politician who had endorsed Afrifa's book, and was closely associated with Edward Akuffo-Addo, the chair of the constitutional commission (Ephson 1968, pp. 74-84). Busia had used his position at the NCCE to argue for multi-partyism, and to promote his own prospects and those of his former UP allies. The NCCE also ran voter education events explaining that citizenship, hard work and elections were all connected – 'every citizen is expected to work and contribute towards the building of a true democratic society' – and reminding Ghanaians that the world was watching to see to see if they would vote for 'the right type of persons'.¹⁴ When political parties were formally allowed to re-establish themselves, Busia promptly resigned from the NCCE and became the leader of the new Progress Party (PP) which was widely understood as the political vehicle of the established elite who had opposed Nkrumah.

In this endeavour, Busia enjoyed the strong and unsubtle backing of Afrifa, who had become the dominant figure in the NLC. While there were ostentatious public assertions of the impartiality of the state in the elections, it was understood that Afrifa meant the PP when he insisted that voters must choose 'men of integrity' to whom the military would hand power. Busia's main rival was Komla Gbedemah, a one-time ally of Nkrumah who had left the CPP long before the coup. Gbedemah's party, the National Alliance of Liberals (NAL) was subjected

12 UKNA FCO 65/83 Lewis British High Commission Accra to Middleton, FCO, 14 and 23 December 1968 and 15 February 1969; 'House's work is slow', *Daily Graphic*, 19 February 1969, p. 1.

13 'Let's rebuild a democratic state – Busia', *Ghanaian Times*, 15 July 1967, p. 3; Editorial: 'Civilian rule – it's up to us', *Ghanaian Times*, 4 July 1967, p. 6.

14 'Future political activity', 4 February 1969, SWB ME 2994 B/6; 'Elect honest men to parliament – Busia', *Daily Graphic*, 27 March 1969, p. 3; 'Avoid ostentatious life – Busia', *Daily Graphic*, 31 March 1969, p. 9; 'Busia's guide to the young voter', *Daily Graphic*, 21 April 1969, p. 3; 'Ghanaians told to exhibit maturity', *Daily Graphic*, 22 April 1969, p. 4; 'Vans for elections', *Daily Graphic*, 24 July 1969, p. 8.

to multiple administrative obstructions through dextrous manipulation of the bureaucracy around imports, with campaign materials, vehicles and printing presses all delayed at customs. At the same time, the possibility of disqualification hung over Gbedemah himself, as the precise terms of the regulations on former CPP members were changed and debated. Candidates for both parties made very similar promises when they spoke at rallies, assuring voters that they would deliver development in very material forms – piped water, electricity, health care (Owusu 1975; Twumasi 1975). Their offer was, as one candidate usefully summarised it, ‘heaven on earth’.¹⁵ The electoral commission presented the election process as a bureaucratic exercise in national mobilisation (Crabbe 1975). But the promise of heaven was particular, driven by a popular expectation mobilised by local community leaders or businessmen. Busia complained of ‘tribal’ organisations, which operated as ‘pressure groups’ demanding that parliamentary candidates show that they could be relied upon to share the rewards of office with their constituents and their own ethnic group.¹⁶ This politics might be seen as entirely instrumental: as one observer put it ‘leaders and the led . . . [were] held together primarily to get what the political system is primarily designed to give – that is, status, jobs and material benefits’ (Owusu 1975, p. 239). Press reports suggested that ‘millions of cedis [the Ghanaian currency] were ‘secretly passing into the hands of the electorate’.¹⁷ Yet there was a moral aspect to this: the virtuous leader was one who could be relied upon to be generous and accessible, and promise-making and local gift-giving were central to this, as was a shared sense of ethnic or local identity (Twumasi 1975). Ethnic politics mapped onto divisions in the NLC to shape an emergent wider rivalry between Akan-speakers (largely supportive of the PP) and Ewe, members of Gbedemah’s ethnic group.

The PP won the election decisively, a victory underlined shortly afterwards, when Gbedemah was disqualified from taking up the seat in parliament which he had won. Parliament, dominated by the PP, went on to choose Akuffo-Addo as Ghana’s president. The elite politicians who had been defeated and then persecuted by Nkrumah had finally secured elected power, able to do so partly through a combination of controls on candidacy that were rooted in a profound elitism and the support of the NLC. But while their electoral engineering had sought to teach ‘educational’ lessons in citizenship, the electoral campaigns had foregrounded generosity and accessibility as the key to electoral success.

15 The campaign was described in the ‘Political roundup’ column in the *Daily Graphic*: 16 July 1969; 4 August 1969; 21 August 1969; 25 August 1969; also ‘NAL promises to revolutionise agriculture’, ‘PP rally at Bukom Square’ and ‘NAL holds rally at Tamale’, *Daily Graphic* 7, 16 and 23 August 1969.

16 NARA RG 59 Box 2141 POL 13 Ghana 1/1/67, McElhiney, US Embassy Accra to State, 16 November 1968.

17 ‘Have Ghanaians learnt this lesson?’, *Daily Graphic*, 20 August 1969, 5; UKNA FCO 65/91 ‘Ghana: the election campaign’, 18 September 1969 and BHC Accra to FCO, 28 August 1969; NARA RG 59 Box 2140 POL 2 Ghana 1/1/69 Foley US Embassy Accra to State Dept, 2 August 1969.

ADMINISTERING ELECTIONS

Elections, or preparations for them, in Ghana and Uganda relied heavily on administrative structures that were the legacy of the colonial state. Electoral commissions in each case were small bodies with limited resources, and it was administrators, whose everyday role was to govern and order, who did the work of registration and managed the polls. This was even more evident in Kenya, where the presence of white settlers and the campaign against the Mau insurgency had created an unusually large, and effective, colonial administration. After independence, that administration was not only maintained, but strengthened. The network of provincial and district commissioners, khaki-uniformed and pith-helmeted, embodied the Kenyan state. The ruling party, by contrast, was institutionally weak; administrators had firmly rebuffed the claims of local KANU officials to authority and status, and even before the split of March 1966, party offices and branches across Kenya had become moribund.

Kenya's administrators had learned from their late-colonial mentors the potential of elections as disciplinary projects that exalted their role as bureaucrats. Electoral 'exercises', as administrators liked to call them, were projects of 'National importance', an opportunity to remind all other government servants that the administrators were ultimately in charge.¹⁸ Provincial and district commissioners had learned too that elections could do multiple other kinds of work: a way to pass the cost of vehicle repairs or the buying of equipment onto someone else's budget; an opportunity to exercise a little local patronage through the employment of temporary staff and the paying of overtime.

In the multiple by-elections of 1966, Kenya's administration had been ostentatiously ordered to display impartiality in the handling of the polling itself: '[n]ot only has justice to be done, but it has to be seen to be done'.¹⁹ But the whole campaign was carried out in the shadow of the physical intimidation of KPU supporters in much of the country, and a very explicit collective threat (Mueller 1984). Prosperity was contingent upon obedient support for the government, and constituencies that returned KPU candidates would be deemed hostile to government, and would not receive the rewards of development. Faced with this threat, only voters in Odinga's home area – who believed that the government was biased against them anyway – voted for KPU. The campaign underlined an assumption already prevalent in Kenyan politics: that the elected representative

18 KNA CB 1/10 Supervisor of Elections to all DCs, 5 July 1967 and DC Kilifi to District Agricultural Officer, County Education Officer, Medical Officer, 21 December 1967; KNA DC KTI 3/1/12 Provincial Commissioner (PC) Eastern to all DCs, 29 April 1967 and DC Kitui to members of parliament, 31 July 1967; KNA CQ 11/2 DC Mombasa to Noah Andoh, 26 January 1970; KNA DC KMG 2/16/11 DC Kakamega to all Heads of Department, 20 November 1969.

19 KNA DC KTI 3/1/11 Mbela, Supervisor of Elections to all DCs, 6 May 1966.

was an intermediary, who would organise local displays of good citizenship and commitment to development and would in return bring funds for schools, clinics, roads or piped water. As KANU's election leaflet put it: 'People cannot eat slogans. They want to see action and material benefits'.²⁰

The 1966 elections entrenched KANU's political dominance. But Charles Njonjo, the Attorney-General and one of the most powerful figures in the government, reproved the administration for the low turnout: 'enthusiasm did not appear to be sufficient to make an exercise like this as successful as one would like'.²¹ In 1968, local government elections saw flagrant manipulation: district commissioners disallowed the nomination of every single KPU candidate on technicalities, so that all KANU candidates were elected unopposed, without a ballot (Mueller 1984, p. 416). In parliament, opposition and backbench MPs drew ominous parallels with events elsewhere in Africa, and revealed a chronic concern with international opinion:

. . . we should learn from what we have seen in other countries like Nigeria, where this sort of thing too place, and what we find now in Nigeria is that people are being slaughtered like animals . . . people will say that in Africa there is no democracy.²²

The newspapers printed a carefully filtered selection of critical letters sent in by the public – and let it be known privately that there were many more such letters. Similarly private disapproval came from the British and US governments, on whose financial and military support Kenya relied. Kenyatta himself then launched a public debate over how candidates for parliament should be chosen. On the anniversary of independence, in a speech that – as usual – urged the public to work hard for development, he unexpectedly announced that in future KANU parliamentary candidates would be chosen through primary elections: only thus could the party be sure that those standing in its name would be genuinely popular. In the wake of the low turnout of 1966 and the popular hostility to the uncontested local government elections, Kenyatta's intervention suggests that multiple questions were troubling him and those around him. How could dominance by a single party be combined with popular participation? What if wealthy candidates simply bought the party nomination and were then returned

20 KNA DC KTI 3/1/11, KANU leaflet, 'Where the truth lies'; 'Personal feelings must be subordinate to general welfare says government', *East African Standard*, 15 April 1966, p. 1. See also 'Kandara voters urged to oust Mr. Kaggia', *East African Standard*, 16 May 1966, p. 5; 'Accept bribes but vote for Kanu says President', *East African Standard*, 21 May 1966, p. 1; 'Kanu only party for progress', *East African Standard*, 11 June 1966, p. 1.

21 KNA DC KTI 3/1/11, statement issued by the Hon. Charles Njonjo, 14 July 1966.

22 Okello Odongo, *Proceedings of the Kenya National Assembly*, 25 October 1968, col. 2289.

unopposed? These questions became entangled with another: how to deal with Tom Mboya, the articulate and effective KANU politician from western Kenya. Mboya's political ambitions were evident; both Odinga and Kenyatta's inner circle, opposed on most topics, were agreed that Mboya should not be allowed to succeed Kenyatta as president. Mboya was not an enthusiast for multi-party elections; but he saw open and active participation in KANU as both a tool for nation-building and a route to his own advancement (Branch 2011). Several months of intense debate over the proposed primaries saw Mboya, in alliance with backbench KANU MPs, insisting on a direct, popular vote to choose the party's candidates. Kenyatta's inner circle argued first for an indirect vote, through delegates chosen by party branches, but Mboya and the backbenchers argued against this, insisting that it was a device to allow powerful civil servants or cabinet ministers to impose their own candidates against the popular will. A dramatic by-election victory for the KPU in Luo Nyanza – the heartland of Odinga's support – tipped the debate, for it was widely argued that a locally unpopular KANU candidate had been foisted on the voters, ensuring defeat. One of Kenya's two (privately-owned) national newspapers editorialised on the importance of genuine choice in KANU primaries – reportedly on the direct orders of Kenyatta.²³ Njonjo then proposed legislation introducing primaries by popular vote; but with voting by public queuing, not by secret ballot. The parliamentary debate on this bill came at a febrile moment days after Mboya had been murdered, in a killing widely assumed to be the work of those close to Kenyatta. MPs denounced the 'big fish with big money' who sought to create 'clique elections' and evoked the international gaze, saying that the local government elections had 'brought a shame on the nation'; and recalled that: '[o]ur struggle for independence was to allow people to vote'. Others derided queue voting as 'primitive'. They insisted that voters must be given electoral choice: 'where every line is blocked, people will be frustrated and you will end [up] exchanging the freedom of the secret ballot for the freedom of the bullet'.²⁴ The government conceded; party primaries would be competitive, with adult suffrage and a secret ballot.

The outcome was hailed as 'nation-building', and, perhaps not coincidentally, the Kenyan press carried reports that same month of the success of Ghana's multi-party elections.²⁵ But that still left the problem of the KPU. Some powerful figures

23 UKNA FCO 31/350, telegram, British High Commission Nairobi to FCO, 12 May 1969 and Edis British High Commission Nairobi to Tallboys, FCO, 19 May 1969; see also for example letter from Haji Ismail, 'Gem defeat a warning to Kanu', *Daily Nation*, 19 May 1969, p. 6.

24 Mwithaga, *Proceedings of the Kenya National Assembly*, 23 July 1969, cols 2352 and 2356; Shikuku, *Proceedings of the Kenya National Assembly*, 23 July 1969, col. 2387; Wariithi, *Proceedings of the Kenya National Assembly*, 29 July 1969, cols 2562 and 2566; Munyi, *Proceedings of the Kenya National Assembly*, 31 July 1969, col. 2724. 5

25 'Primary poll move praised', *Daily Nation*, 8 August 1969, p. 3.

around Kenyatta insisted that multi-party elections would go ahead. But Odinga had a strong following in his home region, Nyanza, and was widely believed to have been very successful in raising funds from overseas for election campaigns in the early 1960s. This raised troubling questions – what if he were able to offer patronage of his own, to rival that of the government? Mass events were organized, presumably by people close to the president, since many took place at his home, or even at official residences, at which Kikuyu were asked to swear oaths to keep power in central Kenya. In October 1969, at a public event in Nyanza, the crowd turned hostile when Kenyatta criticized Odinga; the president's bodyguards panicked and opened fire, killing a number of people. In the following few days, Odinga and other KPU leaders were detained; then the party itself was banned. One backbench KANU MP resisted the ban, arguing that this would make Kenya 'a laughing stock in the continent of Africa', and making direct reference to lessons from Ghana: 'Dr Nkrumah thought he was dealing Dr Busia a final blow. Where is Busia today? Is he not the head of the Ghanaian state?'²⁶ But most KANU MPs stayed silent, and KPU was banned. Kenya did not become a formal one-party state, as the state-owned radio station was quick to point out; but no other parties were permitted to register. Within two weeks, Kenyatta announced that elections would be held in December, with party primaries two weeks before the national polls. Now that KPU had been banned, KANU was the only legally registered party; the candidates selected through the primaries would be automatically declared elected. The administration mobilised what was described as a 'massive army' to run the process; the public were enjoined to show 'respect for law and order'; the Commissioner of Police declared that voting would show 'unity of purpose in building the nation'. A leaflet 'Guide to the General Elections' was sent out to administrators, who summoned politicians to address meetings, and marshalled voters to listen to them. Kenyatta urged the public to regard candidates as patrons, and to vote for those who could 'demonstrate to Kenyans that they would be able to help them'. Government radio commentary offered ambiguous counsel: 'Drink free beers, take free rides, eat free sumptuous dinners, but do not sell your vote'.²⁷ The polls became a 'bargaining game between voters and candidates': '[m]oney was of paramount importance', noted one US diplomat who watched the elections, but he also observed that 'voters reviewed the candidates for the individual most likely to bring them more schools, roads, water holes, medical services etc – faster' (Hyden & Leys 1972, p. 402).

26 Muliro, *Proceedings of the Kenya National Assembly*, 29 October 1969, cols. 1179 and 1180.

27 'Kanu governing council meeting in Mombasa', Nairobi, English, 28 August 1969, SWB ME 3165 B/2; 'President Kenyatta's Kenyatta Day address', Nairobi, Swahili, 20 October 1969, SWB ME 3209 B/1; 'Voice of Kenya commentary', Nairobi, English, 12 November 1969, SWB ME 3230 B/3; 'Eastern province out in force for president', *East African Standard*, 1 December 1969, p. 1; 'Kenyans to vote on December 6', *Daily Nation*, 12 November 1969, p. 1.

The elections swept many sitting members of parliament from office. In their wake, Kenyatta was swift to remind the public that they were responsible for their choices: 'Kenyatta did not elect those who will represent you. You *wananchi* [citizens] elected for yourselves, and if you elected badly it is up to you'. He was similarly blunt in his advice to those elected on the duties of a parliamentarian: these were 'to go around his constituency and help his people'; and to 'meet the wishes of the *wananchi* [citizens] in nation-building' rather than to engage in 'unconstructive criticism'.²⁸ Kenya's elections combined the deployment of an unusually powerful administrative machinery with an explicit embrace of patronage politics.

CONCLUSION: ELECTORAL PARTICIPATION AND VIRTUOUS CITIZENSHIP

After the 1969 elections, Kenya's electoral experiment came to be seen as something of a success story. This was all the more striking when, in 1972, Busia's government in Ghana was toppled by a coup which went as unresisted as that which had overthrown Nkrumah. By contrast, Kenya's rulers seemed to have managed to square the electoral circle, holding elections by secret ballot that strengthened, rather than undermined, the legitimacy of the government. The 'national exercise', as Kenyan civil servants continued to call elections, could, perhaps, be a successful tool for teaching citizenship, yet still be combined with an overt emphasis on the role of politicians as wealthy, generous, attentive patrons. The model was maintained through successive elections in 1974, 1979 and 1983. However, it began to break down in the 1980s when Kenyatta's successor, President Moi, made a clumsy effort to further limit popular choice in parliamentary elections.

Yet we should be cautious in making judgements as to the political genius of Kenyatta and his cronies. The elections of 1969 were co-produced. Their terms were the contingent outcome of the intransigence of back-bench MPs and the enthusiasm of voters as much as of elite scheming: Njonjo, after all, would have preferred a much more controlled ballot. Even the banning of KPU was not inevitable; the 'Guide to General Elections' that was circulated so widely in late 1969 assumed a two-party poll. Nor should we overestimate the singular power of elections in maintaining Kenya's civilian government. Kenyatta's government was protected from overthrow at least partly by the belief that the United Kingdom would intervene to forestall any coup (an assumption that remained widespread even as the likelihood of such intervention rapidly dwindled in the 1970s (Cullen

28 'President Kenyatta's Independence Day address', Nairobi, English and Swahili, 12 December 1969, SWB ME 3255 B/1; 'Kenyatta's address to Western Province MPs', Nairobi, English, 31 December 1969, SWB ME 3268 B/4; 'President's advice to MPs', Nairobi, English, 9 Jan 1970, SWB ME 3276 B/3.

2017)); and by Kenyatta's maintenance of a relatively small and loyal force (Katumanga 2020). Kenyatta was protected too by his determined maintenance of the provincial administration inherited from the colonial state, which kept a tight hold on the police and paramilitary security forces. The resilience of Kenya's competitive single-party system was a product, as well as a cause, of the relative strength of state institutions.

That does not make the debates and experience of the 1960s inconsequential, or irrelevant. They affirmed the possibility that elections should be a tool for nation-building, performing an ideal of virtuous citizenship and stateness: subsequently, even those who flagrantly manipulated elections, or overthrew civilian governments, have consistently claimed commitment to the electoral ideal. At the same time, they provided models and ideas that were to recur: constitutional commissions in Ghana, accusations of petty tribalism in Uganda, debate over primary elections in Kenya. They also offer a comparative story that is relevant to a more recent wave of electoral innovation in Africa. The electoral experiments of the 1960s looked to elections to impress on voters their duty as citizens.

From the 1990s, electoral engineers – often working for international organisations or the development agencies of aid-donor countries – saw the ballot as a means to force politicians and civil servants to adhere to norms of liberal governance: good citizens would use elections to hold their leaders to account. Yet the consequences of their engineering have been uneven. That might be readily explained as the consequence of cheating: there are many ways to manage electoral outcomes (Cheeseman & Klaas 2018), and Africa's rulers have been practising since the 1960s, as we have shown. But there is a further lesson from this history. There continues to be vigorous and often enthusiastic public involvement in elections: not only in Ghana, where there has been repeated peaceful alternation of elected governments since the end of the 1990s; but in Kenya and Uganda, where elections since the 1990s have been associated with intimidation, violence and repeated allegations of malpractice, including vote-buying. How is popular electoral participation compatible with what seems to be persistent misgovernment?

The answer may be that the linkage between electoral participation and virtuous citizenship is complex (Cheeseman et al. 2020). Politicians are expected to be personally generous to their constituents, both during and between campaigns. Like their predecessors in the 1960s, voters in the twenty-first century are given voter education, and they register, queue and cast their ballots as virtuous citizens. But their voting decisions may be influenced more by their estimations of the generosity, wealth and accessibility of candidates, and by an awareness of the power of moral claims embedded in ethnic, local and personal ties (Kramon 2017).

Resources are scarce; voters suspect that politicians will forget them once they are in office, so they demand material evidence of their commitment. Elections may be national exercises; but they can be managed and manipulated in many ways, and they allow the exercising of multiple other ideas of rights and responsibilities. Those are lessons that the electoral engineers of the early 21st century could perhaps learn from studying more closely the electoral experiments of the 1960s.

Acknowledgements

Research for this paper was supported by the UK Economic and Social Research Council, grant ref. ES/L002345/1. Earlier versions of the paper were presented at seminars in Durham and Cambridge; the comments and advice of colleagues at both institutions are gratefully acknowledged.

----- REFERENCES -----

- Afrifa, AA 1966, *The Ghana Coup: 24th February 1966*, Frank Cass, London.
- Agyeman, O 1975, 'Kwame Nkrumah's presence in A. M. Obote's Uganda: a study in the convergence of international and comparative politics', *Transition*, vol. 48, pp. 13-24.
- Ake, C 1993, 'The unique case of African democracy', *International Affairs*, vol. 69, no. 2, pp. 239-244.
- Austin, D 1970, *Politics in Ghana, 1946-60* (first 1964), Oxford University Press, London.
- Austin, D & Luckham, R (eds) 1975, *Politicians and Soldiers in Ghana 1966-72*, Frank Cass, London.
- Babiiha, J 1967, 'The remarkable results of hard work – don't jeopardise it all with elections', *The People*, 18 March, pp. 4-5.
- Banégas, R 2007, 'Commodification of the vote and political subjectivity in Africa. Reflections based on the case of Benin', in R Bertrand, P Briquet P and P Pels, *Cultures of Voting: The Hidden History of the Secret Ballot*, pp. 100-113, Hurst, London.
- Berman, B, Dickson, E, & Kymlicka, W 2004, 'Ethnicity and the politics of democratic nation-building', in B. Berman, D. Eyoh & W Kymlicka (eds), *Ethnicity and Democracy in Africa*, pp. 1-21, James Currey, Oxford.
- Bertrand, R, Briquet, JL, & Pels, P (eds) 2007, *Cultures of Voting: The Hidden History of the Secret Ballot*, Hurst, London.
- Bertrand, R 2007, 'The engineers of democracy: election monitoring agencies and political change in post-Suharto Indonesia', in Bertrand et al. *Cultures of Voting*, pp. 114-141.

- Branch, D 2009, *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization*, Cambridge University Press, Cambridge.
- Branch, D 2011, *Kenya: Between Hope and Despair, 1963-2011*, Yale University Press, New Haven.
- Brennan, J 2008, 'Lowering the Sultan's flag: sovereignty and decolonization in coastal Kenya', *Comparative Studies in Society and History*, vol. 50, no. 4, pp. 831-861.
- Cheeseman, N & Klaas, B 2018, *How to Rig an Election*, Yale University Press, New Haven.
- Cheeseman, N, Lynch, G & Willis, J 2020, *The Moral Economy of Elections in Africa: Democracy, Voting and Virtue*, Cambridge University Press, Cambridge.
- Cohen, D & Parsons, J 1973, 'The Uganda Peoples' Congress branch and constituency elections of 1970', *Journal of Commonwealth Political Studies*, vol. 11, no. 1, pp. 46-66.
- Coleman, J & Rosberg, C (eds) 1968, *Political Parties and National Integration in Tropical Africa*, University of California, Berkeley CA.
- Collier, P 2009, *Wars, Guns and Votes: Democracy in Dangerous Places*, The Bodley Head, London.
- Cooper, F 1997, 'Modernizing bureaucrats, backward Africans, and the development concept', in F Cooper & R Packard (eds) *International Development and the Social Sciences: Essays on the History and Politics of Knowledge*, pp. 64-92, University of California, Berkeley CA.
- Cooper, F 2012, 'Decolonization and citizenship: Africa between empires and a world of nations', in E Bogaert & R Raben, (eds) *Beyond Empire and Nation. Decolonizing Societies in Asia and Africa, 1930s to 1970s*, pp. 39-68, Brill, Leiden.
- Crabbe, VCRAC 1975, 'The work of the Electoral Commission', in pp. 126-39.
- Cullen, P 2017, *Kenya and Britain after Independence: Beyond Neo-colonialism*, Palgrave, London.
- Ekeh, P 1975, 'Colonialism and the two publics in Africa: a theoretical statement', *Comparative Studies in Society and History*, vol. 17, no. 1, pp. 91-112.
- Ephson, I 1968, *Reflections and Refractions on the Ghana Draft Constitution, Book I*, Insight Publications, Cape Coast.
- Evening News* 1965, 'There is victory in the horizon' (editorial), 1 June, p. 3.
- Garrigou, A 1992, *Le vote et la vertu: Comment les Français sont devenus électeurs*, Presse de la Fondation National des Sciences Politiques, Paris.
- Gertzel, C 1974, *Party and Locality in Northern Uganda, 1945-62*, Athlone Press, London.
- Ghana Constitutional Commission 1968, *Memorandum on the Proposals for a Constitution for Ghana*, Government Printer, Accra.
- Hermet, G, Rose, R & Rouquié, A (eds) 1978, *Elections Without Choice*, Macmillan Press, London.
- Hermet, G 1978, 'State-controlled elections: a framework', in G Hermet, R Rose &

- A Rouquié (eds) 1978, *Elections Without Choice*, Macmillan Press, London, pp. 1-18.
- Huntington, S 1965, 'Political development and political decay', *World Politics*, vol. 17, no. 3, pp. 386-430.
- Huntington, SP 1991 'Democracy's third wave', *Journal of Democracy*, vol. 2 no. 2, pp. 12-34.
- Hyden, G & Leys, C 1972, 'Elections and politics in single-party systems: The case of Kenya and Tanzania', *British Journal of Political Science*, vol. 2 no. 4, pp. 389-420.
- Kasfir, N 1976, *The Shrinking Political Arena: Participation and Ethnicity in African Politics, with a Case Study of Uganda*, University of California, Berkeley CA.
- Katumanga, M 2020, 'Post-colonial state-military relations', in N Cheeseman, K Kanyinga & G Lynch (eds), pp. 410-421, *The Oxford Handbook of Kenyan Politics*, Oxford University Press, Oxford.
- Kaunda, K 1964, 'The future of democracy in Africa', *Transition*, no. 15, pp. 37-39.
- Kenya National Archives (KNA) DC LAMU 2/2/12: 'Jifunze uraia', Nos. 17 & 29, 1963 & 1966.
- Kramon, E 2017, *Money for Votes: the Causes and Consequences of Electoral Clientelism in Africa*, Cambridge University Press, New York.
- Lawrence, J 2009, *Electing Our Masters: The Hustings in British Politics from Hogarth to Blair*, Oxford University Press, Oxford.
- Levitsky, S & Way, L 2002, 'The rise of competitive authoritarianism', *Journal of Democracy*, vol. 13 no. 22, pp. 51-65.
- Lewis, WA 1965, *Politics in West Africa*, George Allen & Unwin, London.
- Lindberg, S 2006, *Democracy and Elections in Africa*, Johns Hopkins University, Baltimore MD.
- Lipset, SM 1959, 'Some social requisites of democracy: economic development and political legitimacy', *American Political Science Review*, vol. 53, no. 1, pp.69-105.
- Luckham, R & Nkrumah, S 1975, 'The Constituent Assembly – a social and political portrait', in Austin & Luckham, *Politicians and Soldiers in Ghana*, pp. 89-125, Frank Cass, London.
- Mackenzie, W 1958, *Free Elections: An Elementary Textbook*, George Allen & Unwin, London.
- Mazrui, A 1966, 'Nkrumah – the Leninist czar', *Transition*, no. 26, pp. 8-17.
- Mboya, T 1963, 'The party system and democracy in Africa', *Foreign Affairs*, vol. 41, no. 4, pp. 650-658.
- Mueller, S 1984, 'Government and opposition in Kenya', *Journal of Modern African Studies*, vol. 22, no. 3, pp. 399-427.
- Mujaju, A 1976, 'The role of the UPC as a party of government in Uganda', *Canadian Journal of African Studies*, vol. 10 no. 3, pp. 443-467.
- Mutibwa, P 1996, *Uganda since Independence. A Story of Unfulfilled Hopes*, Hurst and Co, London.

- Ndegwa, SN 1997 'Citizenship and ethnicity: an examination of two transition moments in Kenyan politics' *American Political Science Review*, vol. 91, no. 3, pp. 599-616.
- Ninsin, KA 2006 'Introduction: the contradictions and ironies of elections in Africa', *Africa Development*, vol. 13, no. 3, pp. 1-10.
- Nkrumah, K 1955, 'Movement for colonial freedom', *Phylon*, vol. 16, no. 4, p. 397-409.
- Nkrumah, K 1957, 'On freedom's stage', *Africa Today*, vol. 4, no. 2, pp. 4-8.
- Nkrumah, K 1961, *I Speak of Freedom: a Statement of African Ideology*, Heinemann, London.
- Nyerere, J 1960, 'Will democracy work in Africa?', *Africa Report*, vol. 5, pp. 1-2.
- Nzongola-Ntalaja, G 2006 'Challenges to state building in Africa', *African Identities*, vol. 4 no. 1, pp. 71-88.
- Obote, AM 1970, *Proposals for New Methods of Election of Representatives of the People to Parliament*, Milton Obote Foundation, Kampala.
- Ochieng' W (ed.) 1989, *A Modern History of Kenya*, Evans Publishing, Kisumu.
- Ocitti, J 2000, *Political Evolution and Democratic Practice in Uganda, 1952-1996*, Edwin Mellen, Lewiston NY.
- Owusu, M 1975, 'Politics in Swedru', in Austin & Luckham, *Politicians and Soldiers in Ghana*, pp. 233-263, Frank Cass, London.
- Rathbone, R 2000, *Nkrumah and the Chiefs. The Politics of Chieftaincy in Ghana 1951-60*, James Currey, Oxford.
- Reid, R 2015, 'States of anxiety: history and nation in modern Africa', *Past and Present*, vol. 1, no. 229, pp. 239-69.
- Republic of Ghana 1967, *Parts I and II of the Report into Electoral and Local Government Reform*, Government Printer, Accra.
- Rokkan, S 1961, 'Mass suffrage, secret voting and political participation', *European Journal of Sociology*, vol. 2, no. 1 pp. 132-152.
- Schaffer, FC 1998, *Democracy in Translation. Understanding Politics in an Unfamiliar Culture*, Cornell University Press, Ithaca NY.
- Schedler, A (ed.) 2006, *Electoral Authoritarianism; the Dynamics of Unfree Competition*, Lynne Rienner, Boulder CO.
- Shils, E 1960, 'Political development in the new states', *Comparative Studies in Society and History*, vol 2, no. 3 (1960), pp. 265-292.
- Twumasi, Y 1968, 'Ghana's constitutional proposals', *Transition*, vol. 37, pp. 43-52.
- Twumasi, Y 1975, 'The 1969 election', in D Austin & R Luckham (eds) *Politicians and Soldiers in Ghana 1966-72*, pp. 140-163, Frank Cass, London.
- Vernon, J 1993, *Politics and the People: A Study in English Political Culture, c. 1815-1867*, Cambridge University Press, Cambridge.
- Whittaker, H 2014, *Insurgency and Counterinsurgency in Kenya: A Social History of the Shifita Conflict, c. 1963-1968*, Brill, Leiden.

- Willetts, P 1975, 'The politics of Uganda as a one-party state 1969-70', *African Affairs*, vol. 74, no. 296, pp. 278-299.
- Willis, J, Lynch, G & Cheeseman, N 2018, 'Voting, nationhood and citizenship at the end of empire in Africa', *The Historical Journal*, vol. 61, no. 4, pp. 1113-1135.
- Young, C 1996, 'Africa: an interim balance sheet', *Journal of Democracy*, vol 7, no. 3, pp. 53-68.
- Zolberg, A 1968, 'The structure of political conflict in the new states of tropical Africa', *American Political Science Review*, vol. 62, no. 1, pp. 70-87.

THE PLOUGH AND THE KALASHNIKOV

Ethiopia After the Elections – and Tigray

Greg Mills

Greg Mills is the director of the Johannesburg-based Brenthurst Foundation and was in Ethiopia during the election

‘The population is being moved out of here, and here,’ the UN officer pointed out on a map of Ethiopia’s northernmost Tigray region, speaking just days before the June election. ‘Western Tigray is being extensively depopulated,’ he said, tapping the location of the now ghost town of Humera, once an important regional agricultural centre. As the last Ethiopian city south of the border with Eritrea and Sudan, it is considered a strategic gateway to Sudan. ‘What we are seeing,’ he notes, ‘is that Tigrayans are being “encouraged” to abandon their homes and lands in large areas of the southern part of eastern Tigray as well. What we hear repeatedly,’ he adds, in echoes of the former Yugoslavia, ‘is the need to “clean the bloodlines” of Tigray’.

Ethiopia hosted a much-delayed general election on 21 June 2021 in the midst of not only COVID-19, but also an ongoing civil war in Tigray, instability in the Oromiya and Amhara regions, and continuing friction with its neighbours, notably Sudan.

With the right set of following actions led by Prime Minister Abiy Ahmed, there was hope that the elections could prove to be the start of Ethiopia’s democratic transition. That hope appears to have come crashing down with the arrival of rebel Tigrayan Defence Forces to liberate the regional capital, Mekelle, within a week of the election.

Renowned for his self-confidence and energy, Abiy was appointed prime minister in April 2018 following the resignation of Hailemariam Desalegn in the face of ongoing domestic protest and violence. At the time Abiy appeared a man on a clear mission to reshape regional relations and domestic politics, for which he quickly earned domestic sympathy and international support, being awarded the Nobel Peace Prize in 2019 for making peace with Isaias Afwerki’s neighbouring Eritrea. Ethiopia’s relationship with its one-time guerrilla ally had collapsed into bitter warfare in 1998, ostensibly over the border town of Badme, costing an estimated 100 000 lives during three years of fighting.

Abiy’s rise also signalled the relative demotion of the Tigrayan People’s Liberation Front (TPLF) as the major political power in Ethiopia. This was formally

represented by his dissolution of the TPLF-dominated ruling Ethiopian People's Revolutionary Democratic Front (EPRDF) coalition of four ethnically-based parties formed in 1988 to fight the Derg Marxist regime of Colonel Mengistu Haile Mariam. The EPRDF was replaced by the Prosperity Party in December 2019. When Abiy postponed national elections scheduled for August 2020 on the grounds of COVID-19, the TPLF upped the political ante by holding its own regional election the following month.

The government in Addis Ababa then launched a military operation into Tigray in November 2020 aimed at decapitating the leadership of the TPLF. The co-ordination of Eritrean and Ethiopian forces along with Amharic irregulars and drones from the United Arab Emirates suggests that the plans for the invasion had been laid some time before.

There seems little doubt, too, that the TPLF did instigate the military conflict by attacking federal bases in Tigray in order to get their hands on the heavy weaponry that they lacked. Their own line is that this was a pre-emptive measure, given that the government was about to attack them anyhow. But underlying the TPLF rebellion was a fundamental refusal to accept the loss of power in 2018 with the installation of the Abiy government, and more basically a deluded assessment of their ability to maintain the same level of control over the national government that they had enjoyed until then. There was absolutely no way that most of Ethiopia, and especially both Oromo and Amhara, would accept a government essentially run by a group with a base among some 6% of the population. On the government side, resorting to an alliance with Eritrea in order to control Tigray was always going to be catastrophic, and resulted in the mess in which they have quickly become mired, both domestically – Eritrea is unsurprisingly not held in high regard by most Ethiopians – and internationally.

The resort to war represented a massive leadership failure in Asmara, Addis and Mekelle, one compounded by a series of miscalculations about how quickly the war would end – Abiy promised just days at the outset, and declared victory in three weeks – and by the TPLF, which apparently did not anticipate the Eritrean incursion.

The Tigrayan conflict also, however, came on the back of several years of ratcheting domestic political instability, mainly in the Oromo region, home to 35% of Ethiopia's 110 million population. While Abiy's military move against Tigray may have been aimed at reducing ethnic and political tensions by bringing the province's rebellious leadership back into line, it simultaneously unlocked a regional conflict involving Eritrea and Sudan, the former as backers of Abiy, the latter as the regional bedfellow of the rebel Tigrayan Defence Force incorporating elements of the TPLF.

It has also brought economic stresses in Africa's second-most populous country, compounding the effects of COVID-19.

Growth in the Ethiopian economy, which had become used to rates of more than 10% for the last quarter century, fell during 2020 to just 2% according to the IMF. Its fiscal and forex positions are strained, inflation is topping 20% and the gap between official and black market forex rates have widened. This has slowed an ambitious infrastructure development agenda and left little room for manoeuvre. Its pivot towards manufacturing in its giant SEZs has been slowed by COVID-19, with manufacturing businesses complaining they are not only negatively affected by the forex shortages but are also targeted by revenue authorities, given the fiscal pinch.

Together, political and security problems would divert resources and attention away from dealing with the crisis of development in Ethiopia, which is at the heart of these difficulties in the first instance. Ethiopia ranks at 159th out of 190 countries on the World Bank's Doing Business Index for 2020, with especially poor rankings in 'getting credit' (176) and 'protecting minority investors' (189).

Touted as the first free and fair election in Ethiopia by both government and some opposition figures, the organisation of the June 2021 election was imperfect. Authorities were reportedly unable to hold elections in four of Ethiopia's ten regions, according to the election board chief Birtukan Midekssa. In two of the regions that did vote, she said, opposition observers were reportedly chased away from polling stations. It was a logistical feat: 37 million voters registered for the June 21 election, with 9 000 candidates and 49 000 polling stations across most of Africa's second most populous country.

Because of security concerns and registration problems, the contest in more than one hundred of the total of 547 parliamentary seats was postponed, including 38 in Tigray; while in a further 104, only the ruling Prosperity Party put up a candidate. The Prosperity Party was expected to win a handsome victory, not least because of the fragmentation of the opposition across 45 other parties and the decision by major Oromiya parties not to contest the election.

Political space was limited. The Ethiopian Human Rights Commission reported that 9 000 people had been detained in 2020, for example, following outbreaks of violence after the killing of the popular Oromo singer and civil rights activist Hachalu Hundessa which left hundreds dead. On election day itself there were reports of hindered access to ballots and acts of violence causing delays in the voting process. The election turnout was anticipated to be over two-thirds of those who registered, though there were concerns about the extent of the democratic space.

No-one expected that Abiy would lose the election; it was simply a question of the scale of his majority, whether he would obtain the two-thirds required to change the constitution, and if they proceeded peacefully. This explains why the European Union failed to send an election observer mission, and the US government indicated its disquiet over the poll before the event.

Opposition leaders such as Merera Gudina of the Oromo People's Congress described the event as 'political theatre' which would make matters worse, where a combination of militarisation and co-option of the opposition through 'political commercialisation' ensured that the elections would not, from his perspective, deliver 'Ethiopia's three greatest needs of peace and stability, the birth of a democratic state after 3,000 years of authoritarianism, and meaningful economic development'.

Before the election the capital of Tigray, Mekelle, had all the signs of a city under occupation, and stress. The Toyota Land Cruisers of humanitarian organisations from Catholic Relief to Medicines Sans Frontier, Oxfam, Samaritan's Purse, Save the Children and Care, plough the streets flying their flags literally, liberally stickered with signs illustrating they are unarmed. The number of NGOs in Tigray had, by June 2021, increased to over 100, most of them focusing on food delivery and shelter. And then there was a welter of UN bodies, including UNICEF, UNHCR, the United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA), and the 'Super Bowlers' of food supply, the World Food Program. Many performed a critical function. 'Without the likes of MSF,' says one UN officer, 'the hospitals would have been overwhelmed.'

Ethiopian military forces were clearly evident in Mikelle's markets and streets, on foot patrols and cruising around in their crudely camouflaged 'technicals', usually with a Ray Banned soldier 'riding' behind a loaded machine-gun.

Tigray's economy is badly broken. It is largely dependent on agriculture and land, too, has become a weapon of war.

Mitiku Haile is the founding president of Mekelle University. A soils specialist, he estimated before the election that just 20% of lands had been harvested, 'setting the stage for a catastrophe in the next year'. Access to food and sexual violence have reportedly been weaponised to cause Tigrayans to flee, with countless harrowing stories of lives destroyed in the process. 'Addis appears to believe,' notes one European diplomat in Addis, 'that if a couple of hundred thousand Tigrayans die from famine, that the TDF will give up. Mengistu tried the same tactic in attempting to drain the sea to catch the fish of the guerrilla. This never worked, and the fish came to Addis in flip-flops', he recalled of the role of the TPLF in ending the Derg's bloody rule.

The politicisation of access to food and aid largely explains Ethiopia's history of famine. The worst offenders have apparently been the Amharic militia and Eritrean forces on which Abiy continues to rely to subdue the rebel TDF which has sprung up in the wake of the invasion. The prime minister denied the presence of the Eritreans until March 2021, and maintains that they were not invited in the first instance. Without a status of forces agreement, commonly agreed rules of engagement and a joint headquarters, the Eritreans, Amharic forces and Ethiopians were bound only by the presence of a common enemy – the Tigrayans.

On the eve of the June election an estimated two million Tigrayans were internally displaced, while there have been some 15 000 cases of rape in the seven months since the invasion, and an estimated five million (of seven million Tigrayans) requiring food aid. Virtually no children were in school, while over 80% of the health-centres in the province remain 'inoperable'. The government's own Human Rights Commission, headed by former political prisoner Daniel Bekele, issued a critical report on abuses in the historical Tigrayan city of Aksum.

A more traditional political playbook was employed elsewhere in the country. In Oromiya, for example, the Prosperity Party rolled out a 50% pre-election rise in the minimum cereal prices among this largely farming community, while making a strong pitch to the youth. But they also imprisoned opposition figures, including Jawar Mohammed of the Oromo Federalist Congress (OFC), making a normal political process impossible. In such an environment, at best the election could tick off the constitutional necessity of having one – and offer a step in the right direction for reform.

The constant tussle over access to land goes to the core of the nationalist tensions in Ethiopia; with the constant settlement and re-settlement of ethnic groups, land is central to welfare where just 15% live in the urban areas. It reflects the imperative of Ethiopia addressing its own decolonisation debate; not the usual African one about the obligation of Europeans to the continent on the grounds of historical dispossession, but an internal discussion about the forces of expansion and settlement which produced modern Ethiopia, whereby many Oromiya, in particular, feel subjugated.

In this way Tigray is not the disease in Ethiopia, but rather a symptom of more general political failure. Addis's preferred method of dealing with it, through annexation and ethnic dismemberment, has also sent a message to other regions. And making the war about the last 27 years of oppression by the TPLF has neglected an honest assessment of the role of the EPRDF in this period: 'neither democratic nor revolutionary' as one activist noted.

'Ethiopia's politics is zero-sum,' says Dr Gudina, whose party elected to stay out of the June election. 'Those that are ruling want to control most things. But simply picking people and giving them positions is not akin to a democracy, and nor is it a way to run the country properly and fairly. You can't', adds the university professor, 'impose a road-map of only one person. With millions of young people without employment, the solution has to be democratic stability and governance'.

All this relates to seemingly inexorable demographic changes. Ethiopia's population, which was just 15 million in 1935 and 84 million in 2012, is projected to reach 172 million by 2050.

The hope after the 21 June election was that Abiy would seize the moment and institute an inclusive national dialogue, without which the country would

continue its seemingly inevitable slide to civil conflict. An inclusive national dialogue would address the constitutional tension between the powers of a unitary state and ethno-nationalist provinces, the agenda for electoral reforms, the relationship with Tigray beyond just the TPLF, and key economic issues, especially around land reform.

Now, with the fall of Mekelle, the chance of such a dialogue appears faint.

Abiy could still seize the initiative and surprise the world, but he will have to find the means and make the concessions to back up his rhetoric. He is firmly on the back foot, and fighting, it seems, for his political survival. And yet without a reconciliatory agenda, as Professor Mitiku observes, 'My fear is that, if the farmer's hand does not hold the plough, it will hold the Kalashnikov'.

None of Tigray's problems are going to be resolved without an end to the fighting. That will require, first, enabling humanitarian access and, second, a political settlement. The latter, in turn, demands dialogue and reconciliation.

At the very least, the longer the Tigrayan war goes on, the more difficult it will be to solve, and the longer the period of recovery.

Acknowledgement

An earlier version of this article was published in the *Daily Maverick* on 24 June 2021.

This version is published with their kind permission.

A SILENT REVOLUTION

Zambia's 2021 General Election

Hangala Siachiwena

Hangala Siachiwena is a post-doctoral research fellow in the Institute for Democracy, Citizenship and Public Policy in Africa at the University of Cape Town

ABSTRACT

This paper discusses Zambia's 2021 election which was held in a context of democratic backsliding and poor economic performance. The election resulted in Zambia's third alternation of power between political parties since the democratic wave of the 1990s. The ruling Patriotic Front (PF) used its incumbent advantages to control institutions that were crucial for promoting democracy and ensuring a credible election. The election was also characterised by political violence which limited the ability for the opposition United Party for National Development (UPND) to mobilise freely. Further, an Afrobarometer survey conducted in December 2020 showed that half of all citizens surveyed were unwilling to declare who they would vote for, thereby suppressing the extent of UPND's support. Yet, the UPND won 59% in the presidential election and won the most parliamentary seats in an election that had one of the highest voter-turnouts since the advent of Zambia's multi-party democracy. This paper argues that there was a 'silent revolution' in Zambia that resulted in the defeat of the PF. It also shows that Zambian citizens have not been complacent in the face of democratic backsliding.

Keywords: alternation, authoritarianism, democracy, institutions, Patriotic Front, United Party for National Development, Zambia

INTRODUCTION

On 12 August 2021, Zambia held elections to elect a president, members of parliament, council leaders¹, and local government councillors. The elections were a two-horse race between the ruling Patriotic Front (PF) led by President Edgar

¹ There are three types of councils in Zambia: city, municipal and district. City and municipal councils are led by mayors, while district councils are led by council chairpersons.

Lungu and the opposition United Party for National Development (UPND) led by Hakainde Hichilema. The two candidates had competed against each other in the 2015 presidential by-election and the 2016 general election. Lungu won with a margin of 27 757 votes (or 1.7%) in 2015 and 100 530 votes (or 2.7%) in 2016 (Goldring & Wahman 2016, pp. 109-113).

The PF first came to power in 2011 under the leadership of President Michael Sata, after defeating the former ruling party, the Movement for Multiparty Democracy (MMD) by 183 100 votes in the presidential election, a margin of 6.6%. However, the PF's narrow victories in 2015 and 2016 showed that its hold on power was precarious. Aware of the party's electoral vulnerability, the PF under Lungu became increasingly authoritarian to thwart the challenge to its dominance (Siachiwena 2020, pp. 110-113).

The PF's authoritarianism attracted international attention, including from the Varieties of Democracy Project (V-dem) and Amnesty International – which reported that Zambia was 'on the brink of a human rights crisis' (Mazarura & Tsunga 2021). Zambia's slide to authoritarianism was accompanied by poor economic management, both of which were associated with a decline in support for the ruling party. An Afrobarometer survey conducted in December 2020 showed that support for the PF had declined significantly since elections in 2016 and the last Afrobarometer survey conducted in April 2017 (Seekings & Siachiwena 2021, p. 1). Support for the PF dropped by 25.5 percentage points between 2017 and 2020, while that for the UPND increased by 1.4 percentage points during the same period. However, half of all survey respondents refused to declare which party they would support in the 2021 election (Seekings & Siachiwena 2021). This meant that the true extent of support for both parties could not be predicted confidently.

The large percentage of Zambians refusing to declare who they would vote for could be understood within the context of democratic backsliding. Between 2016 and 2021, the PF increasingly eroded democratic means of competition and used state institutions such as the police and the courts, to intimidate Lungu's opponents (Sishuwa 2021a). There were also concerns that Lungu was preparing to manipulate the 2021 election. The PF deployed some of the strategies discussed in *How to Rig an Election* by Nic Cheeseman and Brian Klaas (2018, pp. 4-5). The Electoral Commission of Zambia (ECZ) created a new voters' roll that registered more voters in provinces won by PF in 2016, while provinces that voted for the opposition had a decline in voters registered, despite continued population growth (*The Africa Report* 26 March 2021). Further, the PF government used COVID-19 regulations to proscribe public meetings by opposition parties, including rallies, while ignoring these restrictions and continuing to hold their own (PF) events (Sishuwa 2020a). PF officials also distributed large amounts of

cash to informal economy workers – reportedly using state funds – in the months leading to the elections (*Lusaka Times* January 31 2021). The media environment was polarised along political party lines during the campaign period, with the public broadcaster providing coverage in favour of the ruling party (African Union 2021). Further, the campaign period was characterised by political violence involving foot soldiers of the PF and UPND, as well as threats and attacks on journalists (Ahmed 2021). These dynamics created an uneven playing field that disadvantaged the opposition.

Therefore, it came as a surprise that the UPND won the first round of the presidential election with a resounding victory. On 16 August, the ECZ announced that the UPND had won the presidential vote by a margin of 981 568 votes, which translated into 20.3 percentage points more than the runner-up (ECZ 2021b). The difference was so large that Lungu conceded defeat, despite speculation before the election that he would hold on to power, either by outright rigging through the electoral commission, forcing a run-off vote; or using the courts to petition the results in his favour (Sishuwa 2021b). Moreover, the extent of Hichilema's victory over Lungu was historic. The difference between the two candidates was the largest in a presidential election since 1996, when Frederick Chiluba of the MMD won with a margin of 60 percentage points ahead of his closest rival.

The results also confirmed speculation in the months leading to the elections that there was a 'silent revolution' in Zambia (*Lusaka Times* May 7 2021). On the previous occasions when Zambia witnessed a change of government, in 1991 and 2011, citizens had openly agitated for change. In the five years preceding the 1991 change of government, there had been two unsuccessful coups and food riots in urban centres (Mills 1992, p. 16). In 2011, the opposition, civil society, and the independent media publicly mobilised support for then opposition leader, Sata (Sishuwa 2020b). Yet, in 2021, demands for change were muted, largely because of threats of political violence and intimidation against opposition supporters (*Lusaka Times* May 7 2021).

It is also instructive that voter-turnout in the 2021 election was 70.61%, the highest turnout in Zambia's multiparty democratic era, second only to 70.77% in 2006 (Electoral Commission of Zambia 2021). This shows that Zambian citizens turned up in large numbers to revolt against the PF, using the power of their votes, despite the threats of political intimidation and violence.

This article draws on Afrobarometer survey data and media accounts to understand the context within which the 2021 election was held. In doing so, the paper demonstrates that the UPND won in a context of poor government economic performance and democratic backsliding. Further, it builds on the analysis of previous Zambian elections to identify issues that were specific to the 2021 election (Banda, Kaaba, Hinfelaar & Ndulo 2020). The article demonstrates

that the extent of authoritarianism under Lungu was clearly resented by most Zambians, who used their vote to hold their government accountable in the absence of other democratic platforms to do so. It also shows that a significant decline in economic conditions, accompanied by an increase in the cost of living, was associated with a decline in support for the ruling party, especially in urban areas. Moreover, the UPND leader Hichilema presented himself as the candidate best placed to address Zambia's many challenges, in a way that resonated with voters, many of whom were young and voting for the first time. This article does not assign causal explanatory power to these factors. Rather, it demonstrates that these factors were salient features of the 2021 election.

This article also has broader implications for the study of elections in Zambia. On the one hand, the democratic backsliding between 2016 and 2021 demonstrates that Zambia's democracy has not yet consolidated despite the country meeting Samuel Huntington's two-turnover test (Huntington 1993). Previous electoral alternations have not guaranteed independent institutions that can promote and sustain democracy. On the other hand, the 2021 results demonstrate that Zambian citizens are likely to change government when their demands for improved economic conditions and democratic governance are not met. This confirms the argument that experiences of at least one alternation in power between political parties in Africa, are likely to condition citizens to believe that they can hold governments accountable even in subsequent elections (Carbone & Pellegata 2017).

The remainder of this article proceeds with a discussion of factors in Zambian elections. These factors have not necessarily contributed to election outcomes. Yet, they are useful for understanding the contexts within which Zambia's elections have been held. The discussion also helps to situate the 2021 elections in a historical perspective and identifies the continuities and changes in Zambian elections. The paper then uses descriptive statistics from Afrobarometer's 2017 and 2020 surveys to understand changes in attitudes that Zambian citizens had towards governance, the economy, and the leading political parties. The article then turns to a discussion of the 2021 election results which is followed by the conclusion.

DOMINANT FACTORS IN ZAMBIAN ELECTIONS

While regular multiparty elections have become the political norm in Africa, democratisation in the region has not advanced much since the democratic wave of the early 1990s (Bleck & van de Walle 2018, p. 63). Incumbents deploy a range of strategies to create uneven electoral playing fields and manipulate elections in their favour (Cheeseman 2015; Cheeseman & Klaas 2018; Levitsky & Way 2010; Bleck & van de Walle 2018). Although Zambia has witnessed three electoral alternations between political parties – in 1991, 2011 and 2021 – elections held in

the democratic era have been biased in favour of incumbents (Siachiwena 2020; Siachiwena & Saunders 2021). Nonetheless, elections held since 2001 have been competitive and incumbents have either won with a plurality of the vote (less than 50%), by thin margins, or been defeated.

There are at least four factors that help to explain the context within which elections in Zambia are held, some of which have also contributed to election outcomes. Firstly, broader concerns regarding governance have been crucial. These include concerns about economic management and democratic governance. The defeat of Zambia's first president, Kenneth Kaunda, in 1991, was the consequence of demands for economic liberalisation and multiparty democracy (Lebas 2011; Rakner 2003). The failure of economic growth translating into improved living conditions during the 2000s also contributed to the defeat of the MMD in 2011 (Resnick 2014). Yet, even when concerns regarding the economy and democratic governance were crucial, dissatisfaction with incumbents was rarely widespread because other political factors were also important.

A second factor that has dominated Zambian elections and politics is the salience of ethnicity and regionalism. The history of political parties mobilising along ethnic or regional lines predates Zambia's independence. According to Posner (2005, p. 26), the institutions established by colonialists in Northern Rhodesia created incentives for rural Africans to invest in their identities as tribe members. By the time of Zambia's independence in 1964, the colonial government had consolidated the over 70 different dialects spoken by locals into four dominant languages: Bemba, Lozi, Nyanja and Tonga (Posner 2005, p. 57). By 1990, 80% of the Zambian population spoke one of the four languages as a first or second language of communication (Posner 2005, p.58).

The salience of ethnic identity amongst Zambians has provided incentives for political parties to target the support of particular ethnic groups or regions. In the 1960s, Kaunda's United National Independence Party (UNIP) derived most of its support from Bemba and Nyanja speakers in the north and east of the country, respectively. Meanwhile, Kaunda's main opponent, Harry Nkumbula – leader of the Zambia Africa National Congress (ZANC) – derived most of his support amongst the Tonga in the south of Zambia (Macola 2008, pp. 36-39). When Kaunda was defeated in 1991, UNIP was reduced to a regional party. It won only 25 out of 150 parliamentary seats, including all nineteen seats in Eastern Province (Rakner 2003, p. 122). Although the MMD first came to power winning more than three-quarters of the vote in both the presidential and parliamentary elections, by 2001 its support was reduced to the Bemba speaking provinces.² Yet, support in these

2 The Bemba speaking provinces are the urban Copperbelt, and the rural Luapula, Muchinga and Northern provinces.

provinces shifted to PF in the 2000s. The PF was led by Sata, an ethnic Bemba speaker. During this period, the MMD's support shifted to Central, Eastern, North-Western, and Western provinces. Support for UPND was limited to Southern Province, which is also the home region of Hichilema. Both ethnic and regional voting patterns have been evident in elections held since 2011.

The third dominant factor in Zambian elections and politics relates to the strategies of opposition political parties. Much of the literature on the strategies of opposition parties in Zambia has focused on Sata's populist mobilisation strategies in the 2000s (Larmer & Fraser, 2007; Resnick 2014; Sishuwa 2016). As an opposition leader, Sata presented himself as a political outsider, despite his longevity in Zambian politics. His populist mobilisation discourse was rooted in an anti-neoliberal agenda, including the limited benefits of foreign direct investment and economic growth on improving the living conditions of the poor. Sata also addressed issues such as poor working conditions in foreign-owned mines, the shortage of market stalls for informal economy workers and inadequate housing in urban slums (Larmer & Fraser 2007, p. 613). Hitherto, these issues had found little expression in national political debates. Sishuwa (2021) argues that populism as a mobilisation strategy did not emerge in the 2000s but had its roots in the 1950s during the struggle for independence. Nationalist leaders had mobilised trade union workers and urban residents using populist strategies (Sishuwa 2021c, p. 1). In practice, leaders who have employed populist strategies in urban areas have often combined these strategies with ethnic or regional appeals to rural voters, to broaden their national appeal (Cheeseman & Larmer 2015; Gadjanova 2017).

Beyond using populist strategies, opposition political parties have also built coalitions as a strategy to broaden support and unseat incumbents. In multi-ethnic societies such as Kenya and Zambia, opposition coalitions of ethnic 'big men' are often formed to consolidate the support of two or more large ethnic groups or regions (Arriola 2012). After the 2011 election, Hichilema began to broaden support for the UPND by co-opting a MMD faction (which included Mutale Nalumango, his running-mate in the 2021 election) and disgruntled PF leaders (including Geoffrey Mwamba, his running mate in the 2016 election) (Beardsworth 2020). The purpose of these coalitions was to co-opt prominent leaders from regions where support for UPND was weak, most notably in the north which is dominated by Bemba speakers.

A fourth dominant factor in Zambian elections and politics is the stability of ruling coalitions. In the multiparty democratic era, ruling coalitions have been susceptible to defeat during open-seat elections, when transfers of power happened from one party leader to another. At the same time, governing parties have traditionally shifted their regional representation and strongholds over time as a way of maintaining dominance, especially after leadership changes.

When Chiluba – the MMD’s founding president – left office after ten years in power, the intra-party struggle to succeed him resulted in the formation of at least four breakaway parties.³ This significantly affected support for MMD which retained power with 29% in 2001, under the first-past-the-vote system, a drop from 73% in the 1996 presidential vote (Siachiwena 2020, pp. 97-103). The MMD’s fortunes subsequently improved under Chiluba’s successor, Levy Mwanawasa who obtained 43% of the vote in the 2006 presidential election, ahead of Sata of the PF who obtained 29% (Beardsworth 2020, p. 41). Yet, following the death in office of Mwanawasa in 2008, rival factions emerged in the MMD to find his successor. When Rupiah Banda, who was Mwanawasa’s vice president, won the intra-party election, he struggled to maintain party unity. Banda won the 2008 presidential by-election – which was held to complete Mwanawasa’s term of office – with 40%, only 2 percentage points ahead of Sata who obtained 38% (Beardsworth 2020, p. 42). The internal wrangles within MMD continued after Banda won the election, partly because factions that had opposed his succession were either marginalised or forced out of the party (Cheeseman & Hinfelaar 2010; Simutanyi 2010). Consequently, Banda lost to Sata in 2011.

Similarly, when Sata died in office in October 2014, rival factions within his party emerged to succeed him. Some members of the losing faction supported Hichilema of the UPND rather than Lungu who was their party candidate. This contributed to the increase in support for Hichilema who lost narrowly in the 2015 election (Siachiwena 2020, pp. 105-106). The challenges associated with presidential succession and party stability also point to the lack of institutionalisation among political parties.

The foregoing factors are useful for discussing the 2021 election. While the PF and UPND retained much of their respective rural ethnic and regional support, the UPND increased its share of votes in PF’s provincial strongholds. This article also shows that the UPND increased its support without necessarily adopting populist strategies. Although the PF did not face internal splits ahead of the 2021 election, support for the party had been precarious since the death of Sata in 2014.

Afrobarometer surveys are a useful source of descriptive statistics highlighting the attitudes of Zambian citizens towards various factors that are associated with elections in the country. The next section examines data from the 2017 and 2020 surveys.

3 Four parties that broke away from the MMD ahead of elections in 2001 are: (1) Forum for Democracy and Development led by Christon Tembo, republican Vice President from 1997 to 2001; (2) Heritage Party led by Godfrey Miyanda (republican Vice President from 1994 to 1997); Patriotic Front led by Michael Sata, MMD National Secretary from 1995 to 2001 (and cabinet minister 1991 to 2001); and Zambia Republican Party, led by Benjamin Mwila, Minister of Defence from 1991 to 1997.

VOTER ATTITUDES BEFORE THE 2021 ELECTIONS

Afrobarometer is a non-partisan, pan-African research institution that conducts public attitude surveys on democracy, governance, the economy, and society in more than 30 African countries, that are repeated in a regular cycle. This article analyses data from the seventh and eighth rounds of surveys conducted in Zambia in April 2017 and December 2020, respectively. The analysis focuses on issues that are commonly associated with elections in Zambia. This includes issues focusing on democratic governance, economic management, and attitudes towards political parties.

Democratic Governance

This section measures attitudes towards democratic governance on four dimensions: support for democracy, extent of democracy, satisfaction with democracy, and performance of democratic institutions.

Afrobarometer measures support for democracy by asking respondents to choose one out of three statements that is closest to their opinions. The three statements are listed in Table 1. The results show that support for democracy in Zambia is very high, as more than 80% of Zambians preferred democracy to other forms of governance in both 2017 and 2020. Support for democracy increased slightly, by about 2%, between the two surveys. These findings are instructive given the extent of democratic backsliding in Zambia under Lungu.

Table 1: Support for Democracy

| | 2017 (%) | 2020 (%) |
|---|-------------|-------------|
| STATEMENT 1: Democracy is preferable to any other kind of government | 81.4 | 83.8 |
| STATEMENT 2: A non-democratic government can be a preference | 9.3 | 6.2 |
| STATEMENT 3: It doesn't matter what kind of government we have | 5.9 | 8 |
| Other responses | 3.4 | 2 |
| Total | 100 | 100 |
| N | 1200 | 1200 |

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

While Zambians overwhelmingly prefer democratic government over other forms of government, the data show that citizens have concerns about the extent to which their country is a democracy. Afrobarometer asks: ‘in your opinion how much of a democracy is Zambia today?’ The responses were ‘not a democracy’, ‘a democracy but with major problems’, ‘a democracy with minor problems’, and ‘a full democracy’. Figure 1 reports the results to this question in the 2017 and 2020 surveys. The results show that in 2017, 9% of surveyed citizens reported that Zambia was not a democracy. In 2020, 13% reported that the country was not a democracy, an increase of 4 percentage points. This also meant that there was a reduction in the percentage of citizens who believed that Zambia was a full democracy. In 2017, 25% of respondents believed that the country was a full democracy but only 16% of respondents held the same view in 2020, a decline of 9 percentage points. Moreover, the extent to which Zambians felt their country was a democracy but with minor or major problems also increased between the two surveys, by 5 and 1 percentage points, respectively. These results are not surprising given the extent to which Zambia’s democratic credentials were eroded under the PF government.

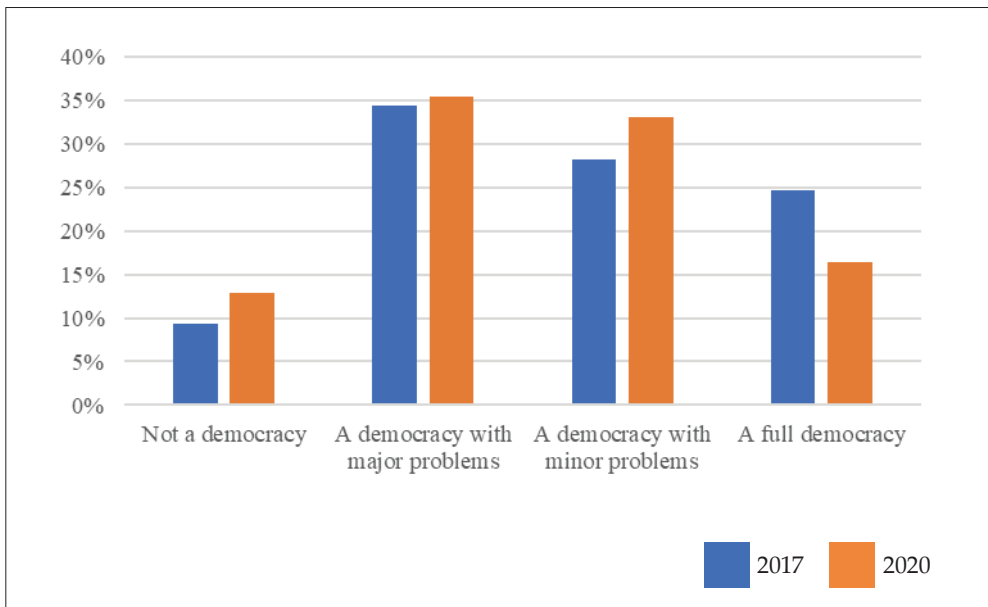


Figure 1: Extent of democracy

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

In addition to asking about support for democracy and the extent of democracy, Afrobarometer also asks: 'overall, how satisfied are you with the way democracy works in Zambia?' The responses to this question were 'very satisfied', 'fairly satisfied', 'not very satisfied', 'not at all satisfied', and 'Zambia is not a democracy'. In 2017, 1% responded to this question by saying Zambia was not a democracy. This increased to 2% in 2020.

Figure 2 indicates the changes in satisfaction with democracy in 2017 and 2020. The response categories 'not very satisfied' and 'not satisfied' are taken as measures of not being satisfied. The categories 'very satisfied' and 'fairly satisfied' are taken as measures of high satisfaction. Figure 2 demonstrates that dissatisfaction with democracy in Zambia increased from 47% in 2017 to 60% in 2020. Conversely, satisfaction with democracy reduced from 49% in 2017 to 37% in 2020.

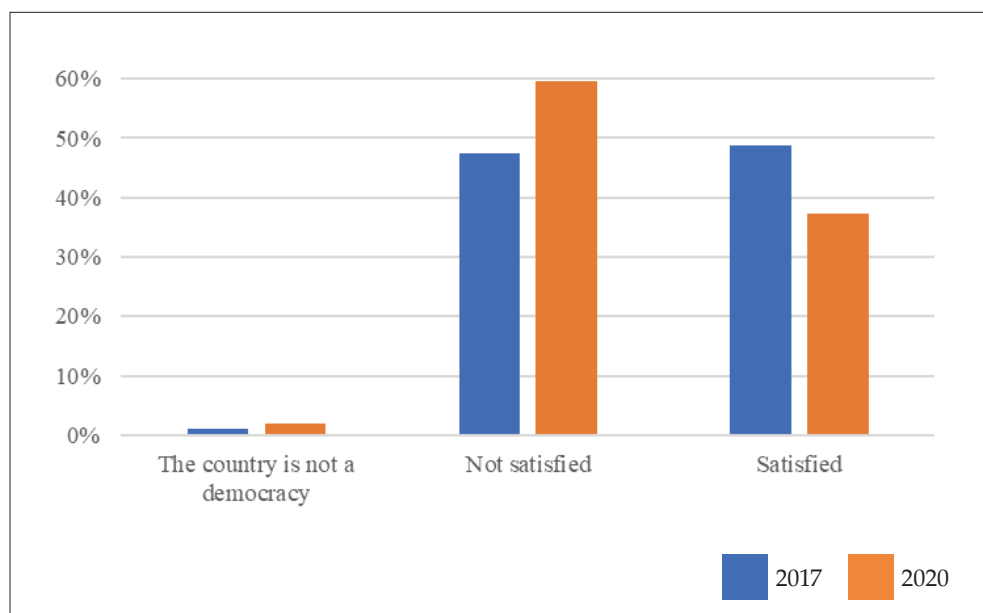


Figure 2: Satisfaction with democracy

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

Taken together, the three questions on democracy reveal at least two patterns that are useful for understanding the state of democracy in Zambia and the 2021 election results. First, the huge gap between support for democracy and satisfaction with democracy corroborates media reports and reports from V-dem

and Amnesty International regarding the declining quality of democracy in Zambia. Second, the results show that the PF government was unable to meet the demands for democratic governance that citizens expected. Given Zambia's history of electoral alternation between political parties, it is reasonable to assume that a ruling party that fails to satisfy the demand for democracy is likely to lose popular support.

The 2020 survey included a question that asked citizens to rate the neutrality of institutions that were expected to play crucial roles in the 2021 election. The institutions include the ECZ which is responsible for conducting elections, and the courts which adjudicate election disputes. Others are the police service which enforces the rule of law; and the national broadcaster, the Zambia National Broadcasting Corporation (ZNBC), which is crucial for providing media coverage.

The Afrobarometer survey asked: 'do you think that the [institution] performs its functions as a neutral or bias institution'? Figure 3 shows that more than half of the citizens surveyed believed that the ECZ and the courts were neutral in performing their functions. While less than half of respondents (46%) believed the state broadcaster was neutral, this was slightly more than those who believed that it was biased (44%). Nonetheless, these results show that media coverage was not considered to be fair ahead of the 2021 election. Attitudes towards the police were the most notable from the results. Only 39% of respondents believed the police were neutral while 59% reported that they were biased. The police had the responsibility of enforcing the Public Order Act that deals with issues such as unlawful assembly and control of public meetings. Media reports suggested that the police had implemented the Act in a manner that benefited the ruling party and disadvantaged the opposition.

The results in Figure 3 also point to a broader issue regarding the importance of democratic institutions that are crucial during various stages of elections. Citizens had less confidence in institutions whose mandate is more crucial during the campaign period. Yet, they had more confidence in institutions that play a central role on voting day itself and after the elections. The public broadcaster was not only perceived to be biased according to survey data, but was also biased in favour of the ruling party, according to the UPND. The UPND sued ECZ and ZNBC for failing to cover Hichilema's campaign programmes and meetings he had with international dignitaries, while providing extensive coverage of the PF (*The Mast* June 20 2021). On another occasion, the police blocked Hichilema from leaving the airport when he arrived in Chipata – the capital of Eastern Province – for campaign events (*Lusaka Times* July 30 2021). The way the police and ZNBC conducted themselves undermined the popularity of Hichilema. The actions of these institutions were also consistent with some of the rigging strategies discussed by Cheeseman and Klaas (2018).

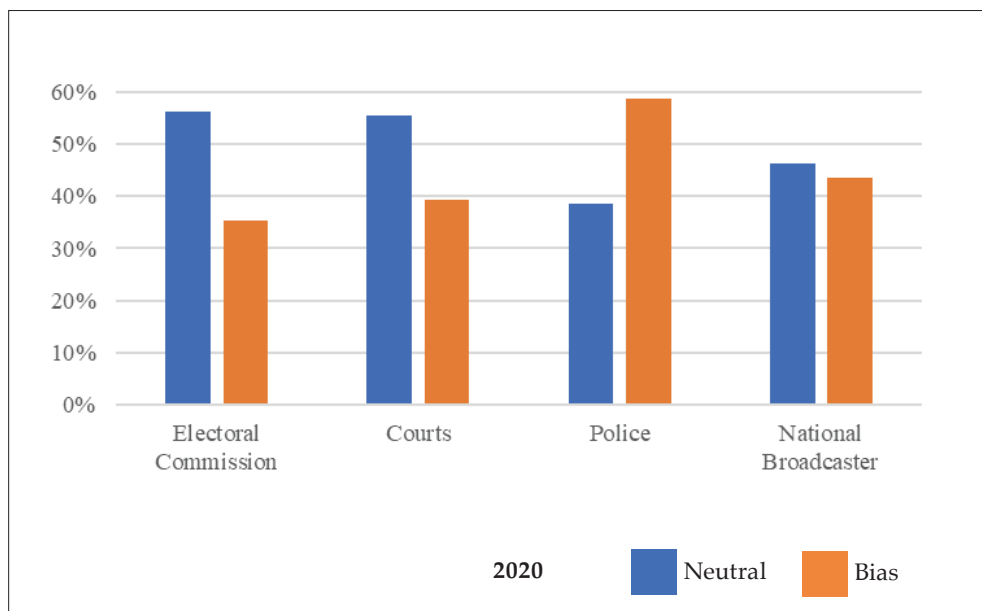


Figure 3: Neutrality of institutions

Source: Afrobarometer Data, Round 8, (2020)

Economic Management

Zambia had a negative economic outlook in the years leading to the 2021 general election. According to the African Development Bank (2021), the country faced severe economic challenges that were exacerbated by the COVID-19 pandemic. The challenges include 'high inflation, widening fiscal deficits, unsustainable debt levels and low international reserves (African Development Bank 2021, p. 147). The severity of the economic challenges prompted the government to develop an economic recovery programme for the period 2020 to 2023 (Government of the Republic of Zambia 2020). How, then, did the economic challenges affect the perceptions that Zambians had towards the economy and the government's economic management?

Afrobarometer surveys ask the question: 'would you say the country is going in the wrong direction or going in the right direction?' Figure 4 reports the results of what citizens thought about the overall direction of the country in 2017 and 2020. The results show that while a third of survey respondents believed the country was going in the correct direction in 2017, this had declined to 24% in 2020. Further, two-thirds of respondents reported that the country was going in the wrong direction in 2017. This increased to 75%, three-quarters of respondents, by 2020.

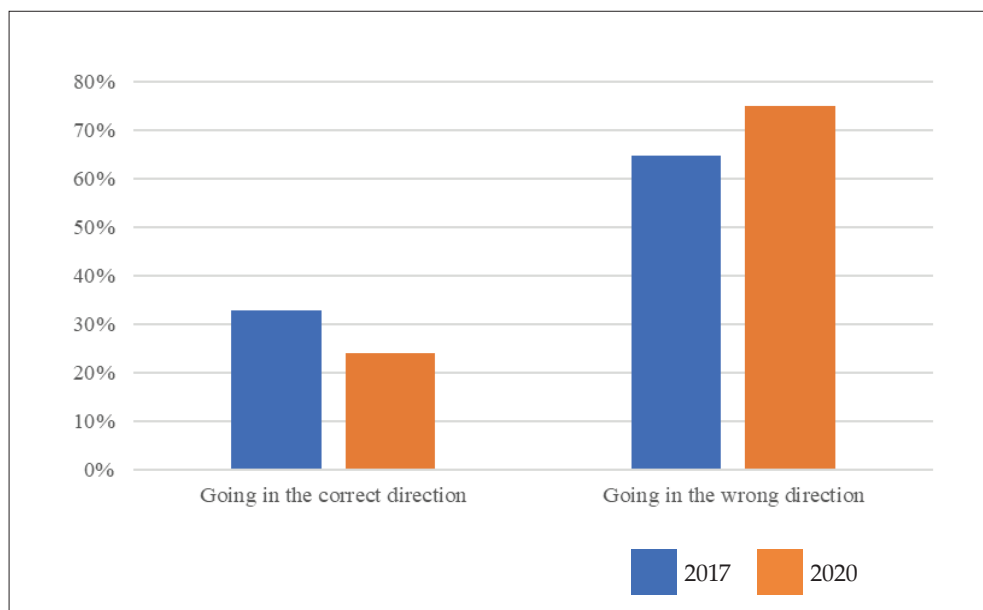


Figure 4: Overall direction of the country

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

Citizens' attitudes towards the overall direction of the country were not sufficient to understand their perceptions about the government's economic performance on various economic issues. A better understanding of their perceptions required further interrogation. Afrobarometer asks: 'how well or badly would you say the government is handling the following matters or haven't you heard enough to say?'

Table 2: Government's economic performance

| Handling well | 2017 (%) | 2020 (%) | Difference (%) |
|--|----------|----------|----------------|
| Managing the economy | 35 | 24 | -11 |
| Improving living standards of the poor | 28 | 29 | 1 |
| Creating jobs | 21 | 15 | -6 |
| Keeping prices stable | 18 | 6 | -12 |
| Narrowing income gaps | 17 | 12 | -5 |
| Improving basic health services | 57 | 44 | -13 |
| Addressing educational needs | 60 | 48 | -12 |

| | | | |
|---|----|----|-----|
| Providing water and sanitation services | 38 | 41 | 3 |
| Fighting corruption | 25 | 17 | -8 |
| Maintaining roads and bridges | 48 | 48 | 0 |
| Providing reliable electric supply | 42 | 25 | -17 |
| Addressing needs of young people | 41 | 25 | -16 |

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

Table 2 reports how citizens rated the government's economic performance on 12 issues in 2017 and 2020. It shows the percentage of respondents who reported that the government was handling the issues 'well' i.e., 'fairly well' or 'very well'. It also reports the difference in percentage points for each issue between the two surveys. The evidence shows that the government was perceived to be handling only two out of twelve issues well in 2017. More than half of citizens surveyed believed the government was addressing education needs and improving basic health services well. Nearly half of all respondents also rated the government's maintenance of roads and bridges well. These results are not surprising given that infrastructure development was the cornerstone of the PF's development agenda. Infrastructure development was financed largely by international borrowing, which helps to explain the growth in the country's external debt levels.

By 2020, most citizens believed the government was not handling any of the twelve issues well. The government was perceived to have performed the worst at keeping prices stable, narrowing income gaps, creating jobs, and managing the economy. Other issues that citizens believed the government had not handled well were providing a reliable electric supply, and addressing the needs of young people. Further, on nine out of twelve issues, the government's performance in 2020 was rated worse than in 2017. These results demonstrate that the decline in Zambia's macroeconomic indicators had implications for the lived experiences of citizens.

Nonetheless, nearly half of respondents rated the government well on maintaining roads and bridges, addressing educational needs, and improving basic health services. This further demonstrates that the PF's infrastructure agenda was the area in which Zambians believed the regime had achieved the most. Yet, it also shows that the PF government prioritised investments in infrastructure development at the expense of addressing issues such as jobs, incomes, and the cost of living, that directly affect the immediate needs of households. With the low levels of confidence in the PF governments economic performance, it is not surprising that the ruling party lost elections with a wide margin.

Attitudes Towards the President, the Ruling Party, and Opposition Political Parties

Afrobarometer surveys include questions that measure attitudes of citizens towards elected political office holders and the opposition. The surveys examine the level of trust that citizens have in the president and the ruling party. It is also necessary to consider what the changes in trust for Lungu and PF meant for trust in the opposition. Figure 5 indicates the results of citizens who reported high levels of trust in the president, ruling party and opposition political parties. This includes those who reported that they trusted each of them ‘somewhat’ or ‘a lot’.

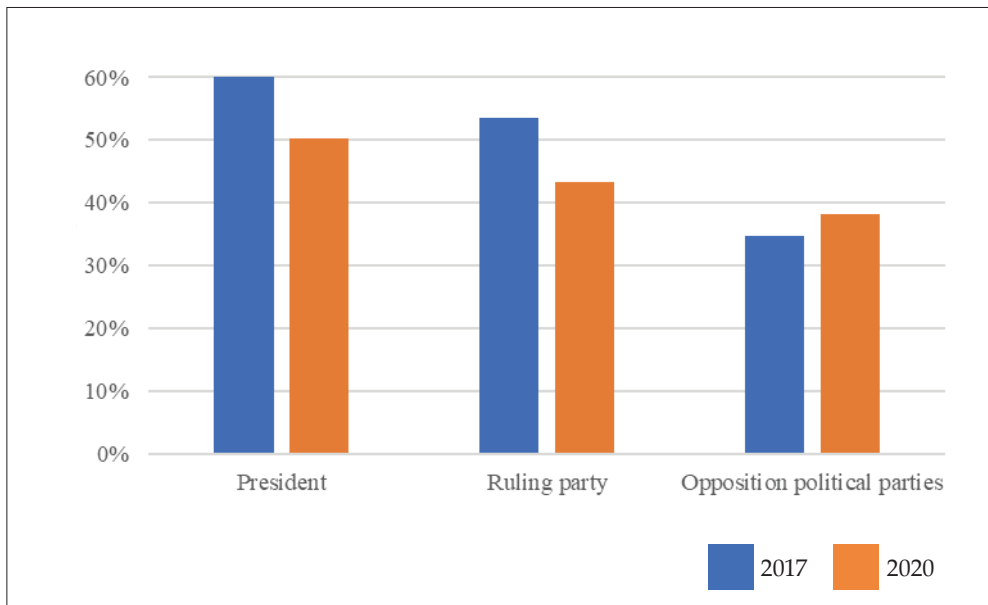


Figure 5: Trust in the president, the ruling Patriotic Front party, and opposition political parties

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

The results, somewhat surprisingly, show that President Lungu was trusted by most respondents. Sixty percent of respondents trusted Lungu in 2017 but this declined to 50% in 2020. Lungu’s ratings remained higher than the ratings of his party, the PF. In 2017, 54% of respondents trusted the ruling party. This shows that a majority of citizens trusted both the president and the ruling party in 2017. By 2020, support for the ruling party had declined to 43%. Afrobarometer also asked how much citizens trusted opposition political parties. The question did not ask

about specific political parties. This meant that it was not possible to examine the levels of trust that citizens had in the UPND or Hichilema. Nonetheless, the results showed that in both surveys trust in opposition political parties was much lower than trust in the ruling party. Yet, trust in opposition political parties increased marginally from 35% in 2017 to 38% in 2020. These results provide some evidence that trust in Lungu and the PF was decreasing while trust in opposition political parties was increasing. It is possible that a question asking about trust in the UPND – and not opposition political parties in general – would have provided more favourable results for the opposition.

In addition to asking about trust in political parties, Afrobarometer asked the question: ‘if presidential elections were held tomorrow, which party’s candidate would you vote for?’ Support for the PF dropped from 44.8% in 2017 to 23.3% in 2020, a decline of 21.5 percentage points. Meanwhile, support for the UPND increased from 24.4% in 2017 to 25.1% in 2020, an increase of 0.7 percentage points. However, a high non-response rate to this question in the 2020 survey, belied the true extent of support for both parties.

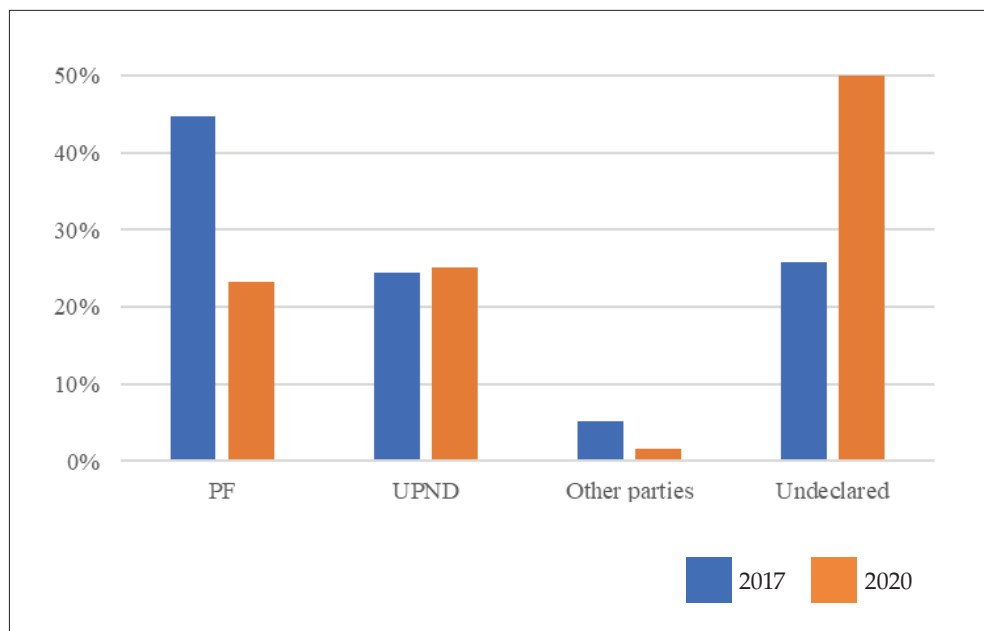


Figure 6: Voting intentions in the presidential elections

Source: Afrobarometer Data, Survey Rounds 7 (2017) and 8 (2020)

In 2017, 25.8% of respondents were undeclared. This includes respondents who refused to answer the question, would not vote, or did not know who they would vote for. In 2020, 50% of respondents were undeclared, an increase of 24.2 percentage points between the two surveys. It is instructive to note that the decline in declared support for the PF matched the increase in undeclared voting intentions. Because of the extent of undeclared voting intentions amongst respondents in 2020, the survey results could not provide an accurate prediction of the 2021 presidential election. Yet, the increase in undeclared voter support was clearly at the expense of the PF, suggesting that Zambians may have become dissatisfied with the ruling party. Nonetheless, declared support for the UPND increased by less than 2% between 2017 and 2020, suggesting that the decline in support for the ruling party did not necessarily guarantee support for the opposition. However, the outcome of the 2021 election suggests that most undeclared voters would have voted for UPND. This demonstrates that the increase in undeclared voters was at the expense of the PF.

THE 2021 ELECTION RESULTS

Sixteen political parties participated in the 2021 presidential election. This includes the PF, UPND and the two former governing parties, the MMD and UNIP. The leader of the New Heritage Party, Chishala Kateka, was the only female candidate who competed for the presidency. Table 3 shows the results both in terms of valid votes cast and the percentage of the valid vote that each candidate obtained.

Table 3: Presidential election results

| Presidential candidate | Party | Votes | Percentage |
|------------------------|---------------------------------------|-----------|------------|
| Hakaïnde Hichilema | United Party for National Development | 2 852 348 | 59.02% |
| Edgar Lungu | Patriotic Front | 1 870 780 | 38.71% |
| Harry Kalaba | Democratic Party | 25 231 | 0.52% |
| Andyford Banda | People's Alliance for Change | 19 937 | 0.41% |
| Fred M'Membe | Socialist Party | 16 644 | 0.34% |
| Highvie Hamududu | Party of National Unity and Progress | 10 480 | 0.22% |
| Chishala Kateka | New Heritage Party | 8 169 | 0.17% |
| Charles Banda | United Prosperous and Peaceful Zambia | 6 543 | 0.14% |

| | | | |
|------------------|---|-----------|-------|
| Lazarus Chisela | Zambians United for Sustainable Development | 5 253 | 0.11% |
| Nevers Mumba | Movement for Multiparty Democracy | 4 968 | 0.10% |
| Enock Tonga | 3 rd Liberation Movement | 3 112 | 0.06% |
| Musonda Mwamba | United National Independence Party | 3 036 | 0.06% |
| Sean Tembo | Patriots for Economic Progress | 1 813 | 0.04% |
| Stephen Nyirenda | National Restoration Party | 1 808 | 0.04% |
| Kasonde Mwenda | Economic Freedom Fighters | 1 345 | 0.03% |
| Richard Silumbe | Leadership Movement | 1 296 | 0.03% |
| Total | | 4 832 763 | 100% |

Source: Electoral Commission of Zambia

Over 7 million Zambians registered to vote in the 2021 general election. The voter turnout in the election was just under 71%, an increase of 14% from a 57% voter turnout in 2016. Hichilema won the presidential election, receiving 2 852 348 votes. This represented 59.02% of valid votes cast. The UPND leader obtained 981 568 more votes than his closest rival, the incumbent president, Lungu. Compared to the 2016 presidential election, Hichilema increased the number of votes he received by 1 092 001. He also increased his percentage of the vote share by 11.39% between the two elections. Not only was Lungu runner-up in 2021, but his performance was a significant drop from the 2016 election. He obtained only 9 903 more votes than in 2016, while his share of valid votes cast reduced by 11.61%, from 50.35% in 2016 to 38.71% in 2021.

According to ECZ data (2021a), there were 1 725 127 voters gained on the 2021 voter register compared to the 2016 register, excluding deceased voters. Further, only 63% of voters registered for the 2016 election (excluding the deceased) were registered for the 2021 election. This suggests that 37% of voters in the 2021 election were first-time voters, mostly the youth. It is reasonable to conclude from these data that Hichilema benefitted from first-time voters far more than Lungu did. It is also clear that while Hichilema broadened his support base between the two elections, Lungu's support barely grew in the same period.

In terms of provincial results, Hichilema won the most votes in six out of ten provinces. He won Central, Copperbelt, Lusaka, North-Western, Southern and Western provinces. Lungu won four provinces: Eastern, Luapula, Muchinga and Northern. The distribution of provinces won demonstrates some continuities and some changes in voting patterns. Hichilema maintained the ethnic and regional support that has sustained the UPND electorally after 2011. Similarly, Lungu

maintained support in the east and north of the country that has been crucial for the PF's support in recent election cycles. Nonetheless, Hichilema increased his support in all provinces, including those where he finished runner up. Crucially, the two most populous and predominantly urban provinces, Copperbelt and Lusaka, swung in favour of UPND. The PF had won the presidential vote in these two provinces in every election from 2006 to 2016. Resnick (2014) argued that the increase in urban poverty amidst economic growth had created political demands that Sata addressed, using populist mobilisation strategies in the early and mid-2000s. The failure of the PF to retain these provinces in 2021 suggests that urban voters were not satisfied with the party's ten-year record in power.

In the parliamentary elections, UPND won 82 of the 156 seats. It won seats in eight of the ten provinces, excepting Luapula and Muchinga. It also won seats in Eastern and Northern provinces for the first time since the formation of the party in 1998. Further, the UPND also won urban seats in Copperbelt province for the first time, having previously won in rural parts of the province only. In total, the UPND gained 24 seats more than its total in 2016. The PF won 59 seats, a drop of 21 from its total in 2016. The seats won were in seven provinces, excluding North-Western, Western and Southern provinces. The Party for National Unity and Progress (PNUP) won a single seat in Western Province. The party, which was led by a former UPND parliamentarian, benefited from the UPND's failure to field a candidate in Nalolo constituency. The UPND candidate had failed to fill in his nomination to stand as a candidate after failing to produce all the documents required by the ECZ (Mofya 2021). This further demonstrates the unpopularity of PF in Western Province, which failed to win the Nalolo seat in the absence of a UPND candidate.

The MMD and the Forum for Democracy and Development had both won seats in 2016 but failed to win any in 2021. Meanwhile, 13 independents won seats, most of whom were candidates who had lost the primaries to contest elections as PF candidates. A parliamentary election in Eastern Province was deferred to 21 October 2021, following the death of an aspiring candidate before 12 August.

Table 4: Distribution of parliamentary results

| Party | Number of seats won | Net change from 2016 |
|---------------------------------------|---------------------|----------------------|
| United Party for National Development | 82 | +24 |
| Patriotic Front | 59 | -21 |
| Party for National Unity and Progress | 1 | +1 |
| Independents | 13 | -1 |

Source: Electoral Commission of Zambia

Strategies of the UPND in the 2021 Election

Beardsworth (2020) demonstrates that the UPND benefited greatly from national political realignments after the defeat of the MMD and election of the PF in 2011. On the one hand, major shifts occurred within the MMD after the party's unanticipated loss. On the other hand, the death of Sata in 2014 created divisions within the ruling PF. From 2011 to 2014, Hichilema communicated with various political heavyweights from across the political spectrum, and built an informal alliance that included the UPND, a faction of the MMD, disgruntled PF heavyweights, and leaders of smaller political parties (Beardsworth 2020, pp. 44-45). Divisions within the MMD were particularly conducive for the growth of the UPND. The MMD contested the 2015 presidential election divided into three main factions. The first included MPs who preferred an alliance between MMD and UPND, with Hichilema as leader. The second, comprising MPs predominantly from Eastern Province, supported Rupiah Banda's return to active politics. However, Banda was unable to represent the party in the 2015 election after party president, Nevers Mumba, won a court case allowing him to be the party candidate. Curiously, Banda's faction backed Lungu and the PF, rather than supporting Mumba or joining the alliance with UPND. It is noteworthy that Banda and Lungu are both from Eastern Province.

The collapse of the MMD in 2015 created a de facto two-party dominant political system. The political realignments also exacerbated the salience of ethnicity and regional voting patterns. MMD party structures in the western and southern half of the country merged with the UPND. Similarly, MMD party structures in the eastern and northern half of the country merged with the PF. Going into the 2021 election, it was evident that both parties would benefit from their ethno-regional support. What was less clear was whether the two urban provinces, including the multi-lingual Lusaka, would maintain their support for the PF.

The collapse of the economy presented Hichilema with a key issue to address. The PF's failure to manage the economy had implications for jobs, the cost of living, and income gaps, among others. These issues affected young voters, especially those between 18 and 24 years. Hichilema mobilised the urban and youth vote using at least three strategies. First, the UPND enlisted its foot soldiers (also known as party cadres) to conduct door-to-door campaigns, especially in the high-density urban slums. Despite constant threats of political violence, UPND cadres conducted their campaigns using what they referred to as the 'watermelon strategy'. This strategy was first developed in 2016 as a counter to political violence and was also adapted in 2021. It involved UPND members wearing green outer garments (the colour used by PF), while concealing red under garments or t-shirts

(the colour of the UPND). In this way, UPND cadres conducted campaigns by disguising their true political identities.

Second, the de facto two-party system allowed him to present the UPND as the only alternative to the PF. The fact that fourteen of the sixteen presidential candidates who participated in the election obtained less than 1% of valid votes cast, demonstrates that voters recognised that the UPND was the obvious alternative to the PF. Even though campaign rallies were banned, Hichilema effectively used social media platforms such as Facebook and Twitter to canvass support. The UPND leader embarked on a tour to distribute face masks across the country as part of his campaign. The events, which included a small entourage of vehicles, attracted scores of Zambians in various parts of the country who came out to see him. The events were streamed live on Hichilema's social media accounts where he had more than a million followers.

Third, Hichilema presented himself as the candidate best suited to address the economy and the concerns of the urban youth – which included demands for an adequate bursary system for tertiary education students. He did this in two ways. First, he drew on his experience as an economist, corporate businessman and commercial farmer to demonstrate that he understood economic management better than Lungu. Second, his connection to young voters on social media earned him the nickname 'Bally', a slang term for 'father' commonly used by urban youth in Zambia. This led to popular campaign phrases such as 'Bally will fix it', referring to his promises to address the economy, and 'Bally will pay', referring to his promises to address student bursaries.

CONCLUSION

Zambia's 2021 elections resulted in the third alternation of power between a ruling party and the opposition since the democratic wave of the early 1990s. The opposition UPND won the presidential vote in the first round, avoiding the need for a run-off. This paper argues that there was a 'silent revolution' in Zambia prior to polling day. Under the PF, Zambia's democratic space had closed, and state institutions were used to create an uneven electoral playing field that disadvantaged the opposition. The main opposition was intimidated from mobilising freely, especially in urban areas. Further, an Afrobarometer survey conducted in December 2020 showed that half of all respondents were unwilling to declare who they would vote for.

Nevertheless, the Afrobarometer survey showed that Zambians had lost confidence in the PF's handling of the economy and its democratic governance. It is also clear from the data that Zambian citizens strongly supported the idea of having a democratic government in preference to other forms of government.

It is noteworthy that the country had experienced two previous alterations in power, the most recent in 2011, yet the quality of democracy declined rather than improved. Wahman (2014) observed that in countries where opposition parties won unfair elections, newly-elected leaders were less likely to implement reforms that would strengthen institutions and consolidate democracy. Rather, newly-elected parties sought to enjoy the benefits of incumbency their predecessors had enjoyed and further undermined democracy.

The election of the UPND in Zambia suggests that citizens expect better economic management and democratic governance. It remains to be seen if Hichilema's administration will implement reforms that will promote democracy and stabilise the economy. What is clear, however, is that support for the new ruling party will be precarious in some regions, especially in urban areas which have been historically volatile for incumbents. The salience of both ethnic and regional voting patterns also means that, in the absence of meaningful reforms, the UPND may struggle to significantly broaden its support in the east and north of the country.

Elections in Zambia also have implications for the rest of the region. The 2021 results show that authoritarian rule and poor economic management are not sufficient to sustain support for ruling parties. Elsewhere in the region, Malawi also experienced alternation in power between the ruling party and main opposition in 2020. The Malawian case also demonstrated the extent to which citizens – who held countrywide protests to challenge the credibility of the first round of the vote held in 2019 – were able to change government even in the face of compromised institutions, including the electoral commission. Taken together, Malawi and Zambia show that voters can change government even amid increased political violence and oppression, and general decline in the quality of democracy.

In the Zambian case, voters did not publicly advocate for change during the campaign period but turned up in large numbers for the August 2021 election, and voted for change. The extent of the PF's defeat despite enjoying a wide range of incumbent benefits, which also suppressed the UPND's campaign efforts, suggests that Zambia experienced a silent revolution.

----- REFERENCES -----

African Development Bank 2021, 'African economic outlook 2021: from debt resolution to growth: the road ahead for Africa', African Development Bank Group. Available at <<https://www.afdb.org/en/documents/african-economic-outlook-2021>>. [1 October 2021]

- African Union 2021, 'African Union Election Observer Mission to the 12 August 2021 General Elections in Zambia statement of preliminary findings', 14 August. Available at <<https://au.int/en/pressreleases/20210814/aeom-statement-preliminary-findings-zambias-2021-general-elections>>. [18 September 2021].
- Ahmed, K 2021, 'Zambia's democracy at 'tipping point' as army deployed on polling day', 12 August. Available at <<https://theguardian.com/global-development/2021/aug/12/zambias-democracy-at-tipping-point-as-army-deployed-on-polling-day>>. [3 November 2021]
- Arriola, L 2012, *Multi-ethnic coalitions in Africa: business financing of opposition election campaigns*, Cambridge University Press, New York.
- Banda, T, Kaaba, O, Hinfelaar, M & Ndulo, M (eds) 2021, *Democracy and electoral politics in Zambia*, Brill, Leiden and Boston.
- Beardsworth, N 2020, 'From a "regional party" to the gates of State House: the resurgence of the UPND', in T Banda, O Kaaba, M Hinfelaar & M Ndulo (eds), *Democracy and electoral politics in Zambia*, Brill, Leiden and Boston.
- Bleck, J & van de Walle, N 2018, *Electoral politics in Africa since 1990: continuity in change*, Cambridge University Press, Cambridge.
- Carbone, G & Pellegata, A 2017, 'To elect or not to elect: leaders, alternation in power and social welfare in sub-Saharan Africa', *The Journal of Development Studies*, DOI: 10.1080/00220388.2017.1279733.
- Cheeseman, N 2015, *Democracy in Africa: successes, failures and the struggle for political reform*, Cambridge University Press, New York.
- Cheeseman, N & Hinfelaar, M 2010, 'Parties, platforms and political mobilization: the Zambian presidential election of 2008', *Journal of African Affairs*, vol. 109, no. 434, pp. 51-76.
- Cheeseman, N & Larmer, M 2015, 'Ethno-populism in Africa: opposition mobilization in diverse and unequal societies', *Democratization*, vol. 22, no. 1, pp. 22-50.
- Cheeseman, N & Klaas, B 2018, *How to rig an election*, Yale University Press, New Haven and London.
- Electoral Commission of Zambia 2021a, '2021 voter registration statistics summary', <<https://www.elections.org.zm/wp-content/uploads/2021/05/2021-VOTER-REGISTRATION-STATISTICS-SUMMARY.pdf>> [3 October 2021].
- Electoral Commission of Zambia 2021b, 'Presidential 2021 general elections', https://zambiaelections2021.org.zm//home/results_by_constituency. [15 September 2021].
- Gadjanova, E 2017, 'Ethnic wedge issues in electoral campaigns in Africa's presidential regimes', *African Affairs*, vol. 116, no. 464, pp. 484-507.
- Goldring, E, & Wahman, M 2016, 'Democracy in Reverse: The 2016 General Election in Zambia', *Africa Spectrum*, vol. 51, no. 3, pp. 107-121.
- Government of the Republic of Zambia 2020. 'Zambia economic recovery programme: restoring growth and safeguarding livelihoods through

- macroeconomic diversification and debt sustainability', Ministry of Finance, Ministry of National Development Planning and the United Nations Development Programme, Lusaka.
- Huntington, SP 1993, *The third wave: democratization in the late twentieth century*, University of Arkansas Press, Norman.
- Larmer, M & Fraser, A 2007, 'Of cabbages and King Cobra: populist politics and Zambia's 2006 elections', *Journal of African Affairs*, vol. 106, no. 425, pp. 611-637.
- Lebas, A 2011, *From protest to parties: party-building and democratization in Africa*, Oxford University Press, Oxford.
- Levitsky, S & Way, L 2010, *Comparative authoritarianism: hybrid regimes after the Cold War*, Cambridge University Press, New York.
- Lusaka Times* 2021, 'Lusambo delivers K300 000 empowerment fund for Kabushi marketeers sourced from State House', 31 January. Available at <<https://www.lusakatimes.com>> [15 September 2021].
- Lusaka Times* 2021, 'There is a silent revolution going on in Zambia, says UPND aspiring candidate', 7 May. Available at <<https://www.lusakatimes.com/2021/05/07/there-is-a-silent-revolution-going-on-in-zambia-says-upnd-aspiring-candidate/>> [15 September 2021].
- Lusaka Times* 2021, 'Police in Chipata try to block UPND campaigns – HH detained for over two hours at the airport', 30 July. Available at <<https://www.lusakatimes.com/2021/07/30/330253/>> [29 September 2021].
- Macola, G 2008, 'Harry Mwaanga Nkumbula, UNIP and the roots of authoritarianism in nationalist Zambia', in JB Gewald, M Hinfelaar and G Macola (eds). *One Zambia many histories: towards a history of post-colonial Zambia*, Koninklijke Brill NV, Leiden.
- Mazarura, T & Tsunga, A 2021, 'Zambian elections: the good, bad and the ugly', *Daily Maverick* 30 August. Available at <https://www.dailymaverick.co.za/article/2021-08-30-zambian-elections-the-good-bad-and-the-ugly/>. [17 September 2021].
- Mills, G 1992, 'Zambia and the winds of change', *The World Today*, vol. 48, no. 1, pp. 16-18.
- Mofya, M 2021, 'It's our candidates who were disorganized, not the party; UPND explains failed nominations', *News Diggers*, 21 May. Available at <<https://diggers.news/local/2021/05/21/its-our-candidates-who-were-disorganised-not-the-party-upnd-explains-failed-nominations/>>. [3 October 2021].
- Posner, D 2005, *Institutions and ethnic politics in Africa*, Cambridge University Press, Los Angeles.
- Rakner, L 2003, *Political and economic liberalisation in Zambia 1991-2001*, The Nordic Africa Institute, Stockholm.
- Resnick, D 2014. *Urban poverty and party populism in African democracies*, Cambridge University Press, London.

- Seekings, J & Siachiwena, H 2021, 'Voting preferences among Zambian voters ahead of the August 2021 elections', *Working Paper no. 27, Institute for Democracy, Citizenship and Public Policy in Africa*, University of Cape Town, Cape Town.
- Siachiwena, H 2020, 'The 2011 – 2016 Zambian elections: Incumbency, Turnovers and Democratic Consolidation', in T Banda, O Kaaba, M Hinfelaar & M Ndulo (eds), *Democracy and electoral politics in Zambia*, Brill, Leiden and Boston.
- Siachiwena, H & Saunders, C 2021, 'Elections, legitimacy and democratic consolidation: lessons from Zambia, Zimbabwe and Malawi', *Journal of African Elections*, vol. 20, no. 1, pp. 67-89.
- Simutanyi, N 2010, 'The 2008 presidential elections in Zambia: incumbency, political contestation and failure of political opposition', *Paper to the CMI/IESE 41 Conference on Election Processes, Liberation Movements and Democratic Change in Africa*, Maputo, 8-11 April.
- Sishuwa, S 2016, 'I am Zambia's redeemer: populism and the rise of Michael Sata, 1955-2011', PhD. Thesis, University of Oxford, Oxford.
- Sishuwa, S 2020a, 'In Zambia, Covid-19 has claimed democracy, not human life', *Mail & Guardian*, 15 June. Available at <<https://mg.co.za>>. [15 September 2021].
- Sishuwa, S 2020b, 'Join me to get rid of this president: the opposition, civil society and Zambia's 2011 election' in T Banda, O Kaaba, M Hinfelaar & M Ndulo (eds). *Democracy and electoral politics in Zambia*, Brill, Leiden and Boston.
- Sishuwa, S 2021a, 'Zambia may burn after the August elections: here is how to prevent it', *Mail & Guardian*, 22 March. Available at <<https://mg.co.za>>. [15 September 2021].
- Sishuwa, S 2021b, 'Zambia: in a fair election, Lungu cannot win. In an unfair one, he can't lose', *African Arguments*, 8 August. Available at <<https://africanarguments.org/2021/08/zambia-in-a-fair-election-lungu-cant-win-in-an-unfair-one-he-cant-lose/>>. [18 September 2021].
- Sishuwa, S 2021c, 'Roots of contemporary political strategies: ethno-populism in Zambia during the late colonial era and early 2000s', *Journal of Southern African Studies*, <https://doi.org/10.1080/03057070.2021.1940602>
- The Africa Report* 2021, 'Zambia's new voters' register is a scam', 26 March. Available at <<https://www.theafricareport.com>> [15 September 2021].
- The Mast* 2021, 'UPND writes AG over ZNBC's continued bias', 20 June. Available at <<https://www.themastonline.com/2021/06/20/upnd-writes-ag-over-znbcs-continued-bias/>> [29 September 2021].
- Wahman, M 2014, 'Democratization and turnovers in sub-Saharan Africa and beyond', *Democratization*, vol. 21, pp. 220 -243, DOI: 10.1080/13510347.732572
- Wahman, M & Boone, C 2018, 'Captured countryside? Stability and change in sub-national support for African incumbent parties', *Comparative Politics*, vol. 50, no. 2, pp. 189-208.

THE NULLIFICATION OF THE 2019 PRESIDENTIAL ELECTION IN MALAWI *A Judicial Coup d'État?*

*Mwiza Jo Nkhata, Anganile Willie Mwenifumbo
and Alfred Majamanda*

Mwiza Jo Nkhata is extraordinary professor, Free State Centre for
Human Rights, University of the Free State

Anganile Willie Mwenifumbo is a human rights officer, United Nations Office of
the High Commissioner for Human Rights

Alfred Majamanda is a partner, Mbendera & Nkhono Associates

ABSTRACT

In February 2020, the High Court of Malawi nullified the May 2019 presidential election and ordered a fresh election. This judgment was later confirmed by the Malawi Supreme Court of Appeal. These two judgments are monumental and unprecedented because this was only the second time a presidential election had been judicially nullified in Africa. The fresh presidential election also scored a first in Africa when it was won by an opposition candidate. These judgments carved new terrain for electoral law in Malawi and divided legal and political opinion. This paper offers a critical analysis of the two judgments. It focuses on the court's treatment of the burden and standard of proof in electoral disputes; the interpretation of 'majority' to mean 50% + 1; and the effect of the nullification of the 2019 presidential election and consequential transitional issues. Overall, the paper concludes that while the outcome of the litigation garnered plaudits, the reasoning in the two judgments is not wholly persuasive.

Keywords: elections, electoral systems, burden and standard of proof, meaning of 'majority'

INTRODUCTION

Constitutions are sacrosanct as they embody the collective ideals and will of a people (Hatchard et al. 2004, p. 12). Beyond laying down national values, they

define the basal relationship between the governors and the governed (Loughlin 2010, p. 278). The power of a people to elect leaders through a free and credible electoral process is a critical tenet of this relationship. A fair and objective electoral system serves as the vehicle through which the will of the people finds expression. There is, therefore, primacy in the obligation of courts to ensure that the resolution of electoral disputes sustains and conforms to constitutional values and ideals, especially when they affect franchise and electoral systems.

On 3 February 2020 the High Court of Malawi, sitting as a constitutional court, delivered judgment in *Saulos Chilima and Lazarus Chakwera v Peter Mutharika and Electoral Commission (Chilima Case-HC)* (Constitutional Reference No. 1 of 2019, HC (LL)) nullifying the May 2019 presidential election. On 8 May 2020 the Malawi Supreme Court of Appeal (the Supreme Court) upheld this judgment in *Peter Mutharika and Electoral Commission v Saulos Chilima and Lazarus Chakwera (Chilima Case-MSCA)* (Constitutional Appeal No. 1 of 2020 (MSCA)). Globally, judicial nullification of presidential elections is rare. To date in Africa, this has only been achieved in Kenya (de Freytas-Tamura 2017). With these judgments, Malawi became the second African country to nullify a presidential election and also, exceptionally, the first where an opposition candidate won a court-sanctioned fresh election (Matonga 2020).

Although the judicial processes have garnered many plaudits, Malawi's former president, Peter Mutharika, lamented that the courts had orchestrated a judicial coup d'état (AFP 2020). Additionally, the High Court judgment included consequential orders that have not only called into question the accuracy of the constitutional interpretation that led to the change of the presidential electoral system, but also raised constitutional reform issues. Notwithstanding the monumentality of the two judgments, sustained scholarly analysis of these two decisions has yet to be undertaken. This article critically analyses the two judgments by probing the legal propriety of the approaches employed in interpreting the disputed constitutional provisions and the legal ramifications of the findings.

The article has four substantive parts excluding this introduction. The first frames the theoretical context by highlighting the justification for judicial resolution of electoral disputes. The article then provides a conspectus of the two judgments, which is followed by a critical analysis of the key procedural and substantive issues, including the burden and standard of proof; the interpretation of majority to mean 50% + 1; and the effect of nullifying the 2019 elections and consequential transitional issues. The penultimate part evaluates the aftermath of the litigation while the conclusion wraps up the discussion.

COURTS AND ELECTIONS IN MALAWI

The Constitution of the Republic of Malawi (the Constitution) establishes the judiciary as the supreme arbiter on its interpretation, protection and enforcement (section 9). This confirms the judiciary's role in the mediation of electoral processes (Kanyongolo 2006, p. 195). The judiciary is an integral part of the institutional framework for elections with the twin mandate of defining the scope and limit of electoral law, and refereeing electoral disputes (Kanyongolo 2015, p. 40).

Elections in a multiparty democracy inevitably involve a contest among several political players. Conflict is, therefore, not uncommon (Kanyongolo 2006, p. 195). Malawi's electoral law creates two sites for dispute resolution, namely the Electoral Commission and the courts. Under section 76(2)(c) of the Constitution, the Electoral Commission is empowered to determine electoral complaints, and the High Court has an appellate function (section 76(3)). Additionally, the High Court has jurisdiction to assess the legality of any exercise of power by the Electoral Commission through judicial review (section 108, Constitution).

In Malawi, the judiciary's competence to resolve electoral disputes is founded in section 103(2) of the Constitution, which vests it with jurisdiction over all issues of a judicial nature. This arguably justifies why an institution with no original democratic mandate inquires into the validity of democratic processes. The continued public trust and legitimacy that it commands further solidifies its stature (Nkhata 2010, p. 240). Unsurprisingly, the judiciary has established itself as the primary custodian of democratic processes (Ng'ong'ola 2002, p. 69).

A CONSPECTUS OF THE JUDGMENTS

The genesis of the litigation was the determination by the Electoral Commission that Peter Mutharika had won the May 2019 presidential election. Two of the unsuccessful candidates, Saulos Chilima and Lazarus Chakwera, separately filed petitions before the High Court alleging irregularities. Subsequently, five High Court judges were empanelled to hear the petitions after their consolidation and certification as a constitutional dispute (Section 9, Courts Act). Broadly, the High Court had to determine two constitutional issues. First, whether the Electoral Commission breached its duties under sections 76 and 77 of the Constitution, which provide for its powers and functions in relation to elections and guarantees franchise. Second, whether the Electoral Commission's conduct infringed the petitioners' rights under section 40 of the Constitution, which, *inter alia*, guarantees the right to vote and to stand for election.

The High Court also interrogated other substantive and procedural matters. The procedural issues included the burden and standard of proof applicable in

electoral petitions. Substantively, the High Court had to determine whether the May 2019 presidential elections were marred by irregularities, including the use of white-out fluid (tippex) on tally sheets, fake tally sheets, and duplicate result sheets. It also had to determine whether the Electoral Commission committed infractions in the conduct of the elections, which amounted to a gross and unjustifiable dereliction of its duties under section 76 of the Constitution.

Upon considering the evidence, the High Court nullified the May 2019 presidential election and ordered a fresh election, having found irregularities that greatly undermined the integrity of the election. The High Court also revisited the meaning of the word 'majority' under section 80(2) of the Constitution and determined that this requires a candidate to amass 50% + 1 of the valid votes cast in order to be duly elected president. It concluded that no candidate had achieved that threshold in the May 2019 elections. This finding effectively discarded the first-past-the-post system that Malawi had used to elect presidents since 1994.

The High Court also made several consequential orders and directives. First, that the presidency reverted to what it was prior to the declaration of the presidential results on 27 May 2019. Second, that parliament should take appropriate legislative measures to ensure that whoever is elected president during the fresh elections is allowed to serve the constitutionally prescribed five-year term. Third, that the Electoral Commission should conduct fresh presidential elections within 150 days. Fourth, that parliament should make necessary amendments to section 75(1) of the Constitution to clarify the appointing authority of the chairperson of the Electoral Commission. Fifth, that parliament should make appropriate provision for the holding of presidential run-off elections in case no candidate secured 50% + 1 of the votes.

On appeal, the Supreme Court affirmed the High Court's findings but on some issues it reasoned differently. For instance, the Supreme Court opined that the High Court improperly nullified the election because under section 100 of the Parliamentary and Presidential Election Act (PPEA) it can only declare an undue return and election. It also held that the declaration of an undue return and election created a vacancy in the presidency, which required a fresh election be held within 60 days. Although the Supreme Court's judgment was said to be unanimous, Justice of Appeal Twea SC (Twea JA) read a separate opinion, which expressed divergent views on some of the findings and can be considered a thinly veiled dissent.

A CRITICAL ANALYSIS OF THE TWO JUDGMENTS

The judgments of the High Court and Supreme Court raise critical procedural and substantive constitutional issues. The procedural issues relate to the burden and standard of proof in electoral petitions. Substantively, the findings bring to the

fore constitutional questions regarding the interpretation of the term ‘majority’, and the ramifications of the consequential orders. Also implicated are questions of transitional arrangements subsequent to the nullification of a presidential election and the necessity for electoral reform. These issues are analysed in this section.

The Burden of Proof in Electoral Disputes

In adversarial legal systems like Malawi, the burden of proof has a significant role in determining judicial outcomes. It determines the party responsible for leading evidence and the attendant level of evidence required to prevail on their claim(s) (*Commercial Bank of Malawi v Mhango*, MSCA Civil Appeal No. 8 of 2001). The standard position in Malawi is that the person who avers must prove the allegation(s).

In civil cases, the legal burden to prove a case always rests with the plaintiff (*Commercial Bank of Malawi v Mhango*). The evidential burden, however, shifts and this plays out in two phases. First, the plaintiff assumes the evidential burden, which is to lead evidence to prove a fact. Afterwards the burden shifts to the defendant who must rebut the plaintiff’s evidence.

Before the High Court, the burden of proof was a heavily contested issue. There were clear constraints in clarity between the parties on the issue, partly due to a conflation of the two constitutive but distinct concepts of burden of proof, namely the legal burden and evidential burden (Cf. Schweizer 2016, pp. 217–234). The petitioners argued that they were only required to raise a prima facie case and the evidential burden then shifted to the respondents. The respondents asserted that the burden did not shift and that they were under no obligation to discharge an evidential burden in rebuttal.

Under common law norms of civil procedure applicable in Malawi, the respondents’ arguments were strange both in theory and practice. In theory, the argument proposed a departure from established rules that require the opposing party to respond to the evidence adduced once the petitioner meets the requisite threshold of proof. Again, assuming that a respondent does not lose the right to challenge the testimony, the witnesses paraded by the respondents were, in the circumstances, of no use as they did not adduce evidence to discharge the evidential burden in rebuttal. Practically, this argument suggests that in an electoral dispute, the Electoral Commission does not need to lead any evidence since the evidential burden does not shift to it. By further extrapolation, the argument suggests that an election petition is akin to a criminal trial that should end after the petitioners close their case, whereupon the court should pronounce on whether the petitioners have discharged both the burden and standard of proof. It further means that the petitioners would have to seek court orders

to compel the Electoral Commission to adduce testimony to explain electoral processes on matters on which only it has information. This glosses over the duty-bearer obligations of the Electoral Commission as an independent and impartial body entrusted with the conduct and management of elections.

Unsurprisingly, both the High Court and Supreme Court were undeviating on who bears the burden of proof. Regardless of the *sui generis* nature of election petitions, the legal burden of proof remains with the person who avers and does not shift throughout the case. The evidential burden, however, shifts once the party that avers has adduced evidence to the requisite standard and the party opposing has to rebut it. The two judgments, therefore, correctly articulated the position regarding the burden of proof.

The Standard of Proof in Electoral Matters

A balance of probabilities versus an intermediate standard

The prefatory of the High Court judgment on the issue of standard of proof begins by conceding that the Courts (High Court) (Civil Procedure Rules) 2017 (the Civil Procedure Rules) and electoral law in Malawi do not address the standard of proof in electoral disputes. This legislative lacuna may have contributed to the controversy on the requisite standard of proof, and this arguably explains the surfeit of foreign cases cited by the parties. In the High Court, the petitioners argued that the standard of proof is on a balance of probabilities. The respondents argued for a raise of the standard of proof to an intermediate level that falls below the criminal standard of proof beyond all reasonable doubt. The respondents also argued that where voters' rights are concerned and allegations of fraud are made, a court should demand an intermediate standard of proof higher than a balance of probabilities. It is clear, from the judgment of the High Court, that the crux of contention emanated from the assumed lack of clarity on the appropriate standard of proof to subject the allegations of criminality, such as bribery and fraud, when they arise in a civil action. The election petition being a civil matter, the interrogation into the requisite standard of proof for allegations of criminality was germane. Nevertheless, the High Court's reasoning fails to address the critical questions on the appropriate standard where an election petition is founded on civil and criminal allegations. The High Court concluded that 'to demand a higher standard of proof ... would have a chilling effect on the capacity of citizens, especially the vulnerable groups in society ... to ably vindicate their democratic rights' (*Chilima Case – HC*, para. 1052).

The Supreme Court reaffirmed this position and stated that 'setting the standard too high ... might well impinge on the average Malawian's right to access justice' (*Chilima Case-MSCA*, p. 38). While both courts adopted an access to

justice approach, the point is not squarely about access to justice. The petitioners sought to vindicate the right to participate in public affairs protected under section 40(3) of the Constitution, which includes the rights to vote and be voted into office. These fall in the realm of civil law and are subject to the balance of probabilities standard. Although presidential petitions are not ordinary proceedings requiring special treatment, they are nevertheless civil cases and as such do not require a higher standard of proof (Hatchard 2015, pp. 291–302). Effectively, the High Court ought to have applied itself to justify its decision to subject civil and criminal allegations to one standard of proof.

The Supreme Court avoided undertaking this exercise, opting to reason that ‘it would not have been the scheme of the law to saddle a petitioner with an onerous burden of proof’ to vindicate rights under the Constitution (*Chilima Case-MSCA*, p. 39). The Supreme Court also rejected the suggestion that if allegations ‘relate to the commission of acts that require proof of criminal intent, the criminal standard of proof beyond reasonable doubt would apply’ (*Chilima Case-MSCA*, p. 39). Commendably, the Supreme Court and High Court judgments avert the scenario of prosecuting a criminal case within a civil case.

Nevertheless, the failure by both courts to motivate their findings is patent. One would have expected both courts to at least analyse the case law that supports the position of subjecting allegations of criminality to a balance of probabilities standard. English law, for example, has settled the debate by rejecting a third standard that falls between the two applicable to civil and criminal cases, such that civil cases that include allegations of criminality are still subject to the balance of probabilities standard. In *Hornal v. Neuberger Products Ltd (Hornal case)* ([1957] 1 Q.B. 247) the English Court of Appeal held that in a civil action, where fraud or other matter which is or may be a crime is alleged, the standard of proof to be applied is proof on the balance of probabilities, and not the higher standard of proof beyond all reasonable doubt. Furthermore, common law provides for certain acts classified as crimes, such as fraud, to be subjected to a civil standard in a civil suit, which averts litigating a criminal case within a civil case (*In re H (Minors)* [1996] AC 563 at pp. 586–7). Considering that Malawian law borrows heavily from English law, both courts ought to have found these developments strongly persuasive.

On the strength of the evidence, the case of *Foodco UK LLP v Henry Boot Developments Ltd* ([2010] EWHC 358 (Ch)) is instructive. In this case, Lewison J explained that ‘although the standard of proof is the same in every civil case, where fraud is alleged cogent evidence is needed to prove it, because the evidence must overcome the inherent improbability that people act dishonestly rather than carelessly’.

Ironically, the respondents in the High Court cited the *Hornal Case* in support of their argument for an intermediate standard. This case, albeit holding that stronger evidence ought to be adduced to prove a criminal allegation like fraud in a civil case, still supports the balance of probabilities standard. English common law has adhered to the binary of civil and criminal standards of proof and has resisted attempts to introduce a third intermediate standard (Wallace-Bruce 1993, pp. 157-166).

While the first petitioner failed to adduce credible evidence to prove the criminal allegations of intimidation, bribery and unlawful arrests of persons, both courts missed the opportunity to expound on the finding why such allegations should be subjected to a balance of probabilities standard. A critical analysis of the varying degrees of probability, within the balance of probabilities standard, could have shed more light on this legal question (Hatchard 2015, pp. 291–302).

Qualitative versus quantitative approaches

A central question to the standard of proof dispute was the appropriate approach to employ in evaluating the evidence to establish claims filed under section 100 of the PPEA, which confers powers on the High Court to declare an undue return and election. Two theories emerged in this litigation. The petitioners advanced the qualitative approach, which entails evaluating the non-compliance with electoral law that vitiates the conduct of a credible election. The respondents argued for the primacy of the quantitative approach, which seeks to interrogate whether non-compliance with electoral law numerically affected the outcome of the election.

Both courts analysed a litany of local and foreign case law that advance the two separate approaches, and a hybrid approach. In the end, the High Court was persuaded by the hybrid approach. It relied partly on the Ugandan case of *Besigye v Museveni et al.* (Election Petition No. I of 2001, Supreme Court of Uganda) which held that numbers are not the only determining factor and courts should look at the whole process of the election because not every violation of electoral law is evaluable quantitatively.

While it held that it would employ a hybrid approach, the High Court effectively used only the qualitative approach as it never attempted to quantify the total number of votes from tally sheets where data were discrepant. However, since it found that non-compliance with electoral law was widespread, quantifying any discrepant data would be an exercise in futility because in such a case it is no longer possible to ascertain the winner or loser. Unlike the High Court, the Supreme Court clarified when to use the approaches, whether severally or jointly. According to the Supreme Court, the use of the qualitative or quantitative test depends on how the petition is framed, such that where a

petition challenges quality or figures, then the qualitative and quantitative tests will be used respectively. If the petition challenges both quality and quantity, both approaches will be employed.

This position conforms to section 100 of the PPEA. It is clear from this section that the discord between the parties on the applicable test emanated largely from their uncritical recourse to foreign case law when the PPEA and local case law are insightful. Section 100(1) of the PPEA provides that a 'complaint alleging an undue return or an undue election of a person ... to the office of President by reason of *irregularity or any other cause* whatsoever shall be presented ... to the High Court'. The Supreme Court properly observed that while section 100 of the PPEA is specifically about quality, the law refuses to circumscribe the categories of grounds under which a claim of undue return or election can be brought, which would in effect include cases that would be subject to the quantitative test. The Supreme Court unequivocally stated that section 100 'leaves it open to the court to employ either the qualitative or quantitative approach ...' (*Chilima Case-MSCA*, p. 94). Undoubtedly, the words 'any other cause' leave the door open for more grounds and how they can be established in court.

Nevertheless, the Supreme Court omitted to address scenarios where the qualitative test alone is not clearly dispositive of a matter. In such a case, arguably, there would be a successive employment of both approaches. This is the approach advanced by Chimasula J in *Phoso v. Malawi Electoral Commission*, ([1997] 1 *Malawi Law Report* 201) where he observed that he would have nullified the by-election and ordered a re-run if the number of votes affected by irregularities could also have affected the results.

The finding by Chimasula J lends credence to the argument that although in certain instances the irregularities could raise a *prima facie* case of quality, a court would still be compelled to employ the quantitative test as well to comfortably determine if quality affected quantity. In this case, the court would be pursuing a hybrid approach. However, under the scheme in section 100 of the PPEA, it appears that once irregularities are proved to have affected quality, it is futile to advance the quantitative approach since there can never be a fair and credible election that fails to adhere to electoral law. Ultimately, however, this depends on the weight to be attached to the irregularities and how they affect quantity.

The Meaning of 'Majority of the Electorate'

Section 80(2) of the Constitution provides that the president shall be elected by 'a majority of the electorate'. Since 1994, all presidents had been elected on the

basis of the first-past-the-post system, which requires a candidate simply to obtain more votes than any other candidate. This position was cemented by the Supreme Court in *Gwanda Chakuamba and others v Electoral Commission (Chakuamba Case)* (MSCA Civil Appeal No. 20 of 2000). In the *Chilima Case-HC*, the High Court departed from the *Chakuamba Case* and held that section 80(2) requires a candidate to secure at least 50% + 1 of the votes cast. These findings were upheld in the *Chilima Case-MSCA*.

As both courts conceded, section 80(2) touches the very heart of Malawi's political and electoral systems. Given Malawi's political dynamics, especially the ethnic and regional voting patterns since 1994, the change in the electoral system, arguably, contributed to the ousting of Peter Mutharika (cf. CMI 2015).

The reasoning of both courts on the meaning of section 80(2) of the Constitution is fundamentally identical. Two factors seem to have influenced their departure from the *Chakuamba Case*. First, in the *Chakuamba Case* the Supreme Court omitted to consider its earlier decision in *Attorney General v MCP (MCP Case)*, ([1997] 2 MLR 181). Both courts pointed out that this was the only other decision that dealt with the meaning of 'majority'. It was also noted that the decisions in these cases contradicted each other on the meaning of 'majority'. Second, both courts drew definitive inspiration from parliamentary practice in Malawi, which requires all 'majority' decisions to be made using a 50% + 1 formula unless a special majority is expressly stipulated. According to both courts, this was a clear indication that the term 'majority' in section 80(2) carried the same meaning as used in parliamentary practice. Both courts also alluded to the absurdity of electing a president with a numerically insignificant share of the votes, for example, 10% of the total votes. This, it was argued, would undermine the notion of majority rule in a democracy.

A great deal of importance was attached to the usage of the term 'majority' in parliamentary practice. Indeed, parliament in Malawi uses the term 'majority' to mean 50% + 1 unless the Constitution requires it to use an enhanced majority i.e., two-thirds (Malawi Parliament 2013). It is open to question whether parliamentary practice ought to have had the binding effect that it did on the determination of the formula for electing a president. The term 'majority', as used in the Constitution in relation to parliament, largely speaks to the conduct of parliamentary business, predominantly voting on bills and other issues. As used in section 80(2), the term speaks to the election of a president. These two processes have distinct levels of solemnity. Both courts may have forcibly assumed the same meaning for the term 'majority' even though the contexts in which it is used, including within the Constitution, are varied. At the very least both courts are guilty of failing to demonstrate an awareness of the contextual nuances in the use of the term 'majority' across the Constitution

which appears at least 15 times in the Constitution. Only an analysis of all these contexts could properly support the finding that the same meaning is intended across the Constitution. This oversight risks subjecting the term 'majority' to a straight-jacket definition erroneously ascribed by the courts that is oblivious of its contextual usage across the Constitution.

There is diversity to the contexts in which the Constitution employs the term 'majority' and it is very doubtful if the same purport was intended in all these contexts. The subject matter at issue, in relation to which the term 'majority' is used, ought to indicate what the Constitution may have intended. For example, the confirmation of the appointment of an Auditor General or Inspector General of Police does not have the same solemnity as the election of the president, yet these also require a majority decision in parliament. An acknowledgment of the nuances to the usage of the term 'majority' in the Constitution is absent in the judgments of both courts. This suggests a rather uncritical embrace of the decision in the *MCP Case*, which tangentially dealt with the meaning of 'majority', and only in the context of determining parliament's quorum.

In the *Chakuamba Case*, the Supreme Court stuck to the literal meaning of the term 'majority'. While all approaches to constitutional interpretation must be brought to bear in construing the Constitution (as correctly conceded in the *Chilima Case-HC*), there is importance to be attached to the presumption in favour of the plain meaning of words and the need to respect the language of the framers (Webb 1998, p. 218). This is because constitutional interpretation, in all contexts, is basically about attaching meaning(s) to words. Instead of over-focusing on the usage of the term 'majority' in parliamentary practice, a more useful enterprise might have been to engage in comparative constitutional analysis. Ironically, the Supreme Court attempted this in the *Chakuamba Case* and found that the requirement for a majority of 50% + 1 is, generally, explicitly provided for in other constitutions and is not one to be implied. In the *Chilima Case*, both courts eschewed this approach.

The controversy about reliance on dictionaries also deserves mention. In the *Chakuamba Case*, the Supreme Court relied on the Concise Oxford English Dictionary (COED) to determine the ordinary meaning of 'majority'. In the *Chilima Case-HC*, this reliance on a general dictionary was faulted. According to the High Court, the Supreme Court in the *Chakuamba Case* should have relied on a specialised law dictionary and it hence opted to use Black's Law Dictionary to deduce that the term 'majority' means 50% + 1. The problem with this approach is that a constitution is never simply a legal document but is also a political and historical text. The term 'majority', therefore, is more than a legal term and to assume that only a specialised law dictionary could fix its meaning was erroneous. The challenge with such a dictionary is that it gave the meaning of

the term 'majority' as generically used in the law without having any regard to the socio-political and historical context of the Constitution. Overall, the courts' approach demonstrates the dangers of employing unfettered judicial discretion in adjudication where the outcome of a case is not clearly dictated by statute or precedent. This results in interpretations actuated by policy inclinations instead of those that have regard to arguments of principle in consonance with democratic ideals (Dworkin 1975, pp. 1057–1109).

There is an additional challenge from the Black's Law Dictionary meaning of 'majority', which neither court confronted. Indeed, Black's Law Dictionary defines 'majority' as 'a number that is more than half of a total; a group of more than 50 per cent' (Garner 2009, p. 1040). This by itself would support interpreting section 80(2) as requiring a presidential candidate to obtain 50% + 1 of the votes to be elected. Strikingly, however, Black's Law Dictionary goes on to state that 'a "majority" without further qualification usually means a simple majority' (Garner 2009, p. 1040). A 'simple majority' is then defined as 'a numerical majority of those actually voting' (Garner 2009, p. 1041). Notably, Black's Law Dictionary offers definitions of different shades of 'majority' – which neither court seemed to fully countenance. Not insignificantly, the expression that the High Court defined, using Black's Law Dictionary, is 'majority vote' (*Chilima Case-HC*, para 1423) whereas section 80(2) uses the phrase 'a majority of the electorate'. In section 80(2), the Constitution uses the term 'majority' without a qualifier, suggesting that the meaning intended is as later clarified in Black's Law Dictionary, i.e., a numerical majority of those actually voting. The meanings drawn by both courts, strangely, do not find support even within Black's Law Dictionary.

There is another subtle dimension to the contest of dictionaries. In the *Chakuamba Case*, the Supreme Court used the COED to define several other terms: 'elect', 'ballot', 'express' and 'suffrage'. In arriving at the meaning of 'electorate', the Supreme Court built on the meanings of the earlier mentioned words as crafted by the COED. The irony is that in the *Chilima Case*, both courts readily accepted the meaning of 'electorate', as defined in the *Chakuamba Case*, but outright rejected its definition of 'majority'. Yet the definition of 'electorate', in the *Chakuamba Case*, was in part built on meanings ascribed to other terms derived from the COED. The rejection of the meaning of 'majority' from the *Chakuamba Case*, on the basis that it was derived from a non-authoritative dictionary, was, therefore, disingenuous.

Furthermore, the suggestion that a president elected with 10% of the national vote would undermine the democratic foundations of the country is suspect. As applied by both courts, there is a bland assumption that in a democracy, a president must always secure a 50%+1 majority of the electorate to be legitimate. Comparatively, however, a candidate with a majority of electorate votes does not

always become president and neither is the required threshold always 50%+1 (AP 2020).¹ The manner in which votes are translated into a governing mandate varies from one system to another, and this simply represents national choices. Both courts failed to appreciate that a plurality system is, inherently, no less democratic than a majoritarian system. Fundamentally, it is important to bear in mind that there is no perfect electoral system (Kadima 2003, pp. 33–47). Ironically, both courts presented the 50%+1 as the perfect electoral system for Malawi.

Additionally, even assuming that both courts were correct in endorsing majoritarianism, the judgments seem oblivious to the various shades of majoritarianism. Majoritarianism can be manifested through at least two systems, two-round voting and alternative/preferential voting. If the Constitution had intended to create a majoritarian system, this would have been clearly spelt out by including provisions governing a run-off should no candidate attain the stated 50% +1 majority of votes cast, and not left for conjecture – the *Chakuamba Case* was clear on this point. Both courts may also be guilty of usurping parliament’s legislative function in changing the electoral system because the lapses earlier pointed out suggest an incorrect interpretation of the term ‘majority’. The change of the electoral system adds another layer of complexity if parliament failed to pass the run-off provisions and no candidates in future elections attained a 50% +1 majority of votes during the first round of polls. This would create an electoral impasse since the Electoral Commission cannot hold a run-off without any legislative mandate and guidance.

The Effect of the Nullification and Transitional Matters

Subsequent to nullifying the May 2019 presidential election, the High Court issued several directives and consequential orders. These take a particularly interesting legal turn in light of the separate opinion in the Supreme Court by Twea JA.

The Supreme Court found that the High Court erroneously ‘nullified’ the presidential election because, under section 100(3) and (4) of the PPEA, a court can only declare an undue return or election. This is understandable; but given the prescriptions of section 100 of the PPEA, it is also clear that a declaration of undue return or election nullifies an election. While being alive to these legal nuances, this paper loosely uses the term ‘nullification’ to capture the effect of such a declaration.

1 In the United States of America, for example, the winner of the presidential election is not necessarily the winner of the popular vote (AP 2020).

Period Within Which to Hold a Fresh Presidential Election

After nullifying the presidential election, the High Court had to decide the timeframe within which the Electoral Commission was to hold fresh presidential elections. The High Court did not attempt to find a solution from the existing legislative framework. Instead, it exercised its discretion to order a fresh presidential election within 150 days. While acknowledging the High Court's exercise of its discretion, the Supreme Court held the view that the period should have been shorter. It held that a prolonged delay in holding fresh elections is unjustifiable and undesirable in the interest of democracy. It opined that 'the law envisages that a by-election or a fresh election shall be conducted in the shortest possible time after the occurrence of the event that necessitates it' (*Chilima Case-MSCA*, p.120). It then embarked on an analysis of the Constitution and the PPEA for guidance.

Its first port of call was section 63(2)(b) of the Constitution, which addresses a vacancy in the seat of a member of the National Assembly. It provides that a by-election to fill a vacant seat in the National Assembly be held within 60 days or as expeditiously as possible. The Supreme Court further analysed section 85 of the Constitution, which governs the procedure for addressing vacancy in both the office of the president and the first vice-president. In such a case, section 85 provides that the Cabinet should elect from among its members an acting president and an acting first vice-president who shall hold office 'for no more than sixty-days, or where four years of a Presidential term have expired, for the rest of that Presidential term'.

The Supreme Court noted that the Constitution provides for circumstances where both the office of the president and first vice-president may be vacant, and that these 'circumstances are not spelt out and that the categories are not closed' (*Chilima Case -MSCA* p.121). The Supreme Court concluded that upon a declaration of an undue return or election, fresh elections should be held within 60 days. However, expediency prevented it from overturning the High Court's order to hold fresh elections within 150 days.

Twea JA touched upon this issue in his separate opinion. He pointed out that when a court declares an undue return of a member of the National Assembly, section 63(2) of the Constitution and sections 32(2) and 44 of the PPEA spell out the procedure and the timeframe of 60 days for holding a by-election. Twea JA correctly observed that there is no similar procedure in respect of the presidency.

The interpretation that fresh presidential elections should be held within 60 days is problematic on several fronts. It is incomparable and incorrect to use the timeframe applicable for holding a by-election to fill a vacancy in the National Assembly with that of a fresh presidential election. The Supreme Court may have

been confounded in its view by section 85 of the Constitution, which requires that an election be held within 60 days in the event of a vacancy in the office of both the president and the first vice-president.

The Supreme Court, it is argued, misconstrued the concept of vacancy under section 85 of the Constitution, which should be understood within the broader constitutional context of vacancies in the presidency. The scenario in section 85, where the offices of the president and first vice-president become vacant, is peculiar and not of general application.

Generally, the Constitution does not permit a vacuum in the presidency. Section 81(4) provides that the 'President and First Vice-President shall hold office until such time as his or her successor is sworn in'. Sections 85, 86 and 87 of the Constitution spell out resignation, impeachment, death and incapacity as the circumstances that can engender a vacancy in the presidency and the procedure for succession. Section 85 provides the procedure when both the offices of the president and the first vice-president become vacant. The circumstances of resignation, impeachment, death and incapacity can only trigger this state of affairs if they happen simultaneously to both offices. In such a case, there will indeed be a vacancy in the presidency both *de jure* and *de facto* within the meaning of section 85.

The Supreme Court proceeded on the understanding that the declaration of undue election and return under section 100 of the PPEA creates a vacancy, *de jure* and *de facto*, in the presidency such that the elected president should have vacated the office forthwith. A *de jure* vacancy is created where a president may no longer hold the office by law even though they might still in fact continue to occupy the office pending a transition. Arguably, a typical *de facto* vacancy is not possible because anyone who cannot hold a presidency in fact cannot do so in law. For example, in case of incapacitation, a president ceases to hold office by law and in fact.

Therefore, in order to fully appreciate the Supreme Court's misunderstanding about vacancies in the presidency, a distinction should be drawn between a vacancy *de jure*, and a vacancy that is both *de jure* and *de facto*. A *de facto* vacancy that is not *de jure* is not theoretically and practically possible such that every *de facto* vacancy creates a *de jure* vacancy. However, certain *de jure* vacancies are saved by section 81(4) of the Constitution, which allows an incumbent to *de facto* and *de jure* serve until a successor is sworn in. For example, in the event of simultaneous death of both the president and the vice-president, recourse cannot be had to section 81(4) and 83(1) of the Constitution as there is no incumbent to hold power until a successor is sworn. However, this is possible where, despite a vacancy *de jure*, an incumbent exists to govern during the transitional period

as in the case of a declaration of undue return or election under section 100 of the PPEA.

The Supreme Court's employment of the 60-day period prescribed under section 85 to extrapolate that a fresh presidential election ordered pursuant to section 100 of the PPEA should also be held within that timeframe, seems rather unfounded. This extrapolation glosses over the peculiarity of the circumstances in section 85. This provision applies to instances where both the president and first vice-president have vacated their offices both *de facto* and *de jure*, which vacancies trigger a transition that requires the cabinet to elect one of its members to serve as acting president and acting first vice-president. Since they both can no longer govern, it is imperative that elections be held expeditiously. This is because two unelected individuals, whose only qualification is that they were serving in cabinet at the time the vacancies arose, should not be allowed to govern without a popular mandate. In contrast to the case of a declaration of undue return or election, despite creating a *de jure* vacancy the incumbents still occupy the offices of president and first vice-president both *de jure* and *de facto* by virtue of 81(4) and 83(1) of the Constitution. A declaration of undue return or election, therefore, does not create a vacancy within the meaning of section 85 that would trigger the application of the timeframe of 60 days set therein.

In contradistinction to a vacant parliamentary seat, a by-election is held expeditiously because the National Assembly does not benefit from a similar provision where an incumbent continues to represent a constituency. In this context, the declaration not only creates a vacancy both *de jure* and *de facto* but also a representation vacuum. Further, section 67 of the Constitution determines the life of the National Assembly by providing for its dissolution on 20 March of the fifth year after its election. As a result, this makes it impracticable for a predecessor to fill the void once a vacancy is created. This scenario is impossible in respect of the presidency where the incumbents continue to serve until successors take oath of office.

Perhaps the Supreme Court should have simply deduced the timeframe squarely based on practicality. It could have assumed that if the Constitution, under section 85, envisages that it is practicable to hold an election within 60 days, then it should also be possible if a fresh presidential election is ordered under section 100 of the PPEA. There is no compelling reason to subject these scenarios to different timeframes. However, the answer did not lie in assuming that a declaration of undue return and election creates a vacancy within the meaning of section 85 of the Constitution. The Supreme Court should have conceded that there is a legislative lacuna and recommended that the National Assembly address it. Twea JA was cognisant of this lacuna and refused to draw a solution from section 85. Paradoxically, he held the view that a declaration of

undue return or election under section 100 of the PPEA creates a vacancy in the office of the presidency within the meaning of section 85 of the Constitution.

Status of the Presidency upon Declaration of Undue Return or Election

As noted earlier, the Supreme Court's reliance on section 85 of the Constitution to argue that the categories of presidential vacancies are not closed puts two constitutional provisions in conflict. Effectively, the Supreme Court and Twea JA argued that an order under section 100 of the PPEA creates a vacancy in the presidency and vice-presidency which should trigger the provisions of section 85. This would require the cabinet to elect an acting president and acting first vice-president from its members. Logically, this argument ignores sections 81(4) and 83(1) of the Constitution, which mandate an incumbent to continue serving until a successor is sworn in.

Ironically, the Supreme Court avoided holding that the cabinet should have appointed an acting president and first vice-president to fill the void. The Supreme Court ought not to have selectively used section 85 to define the timeframe for holding a fresh election and ignored the other elements in this provision. Common sense would demand that if the Supreme Court found that the timeframe for holding a fresh election is the one defined by section 85, and that a vacancy was created, then it should have concluded that cabinet should have appointed caretaker office bearers for up to 60 days.

The Supreme Court did not fully consider the finding of the High Court that the status of the presidency reverted to what it was prior to the nullification of the presidential election. Twea JA clearly disagreed with this finding. His view was that, with this directive, the High Court purported to have had the jurisdiction to extend the presidency of the previous government. He found a number of factors irreconcilable: first, the position that a declaration of undue return or election under section 100 of the PPEA creates a vacancy in respect of a member of the National Assembly but not in the office of the president and first vice-president. Second, that a presidency that is void ab initio is capable of creating constitutional offices valid at law. He thus concluded that a declaration of undue return or election renders the presidency void and creates a vacancy that ought to be filled by cabinet pursuant to section 85 of the Constitution.

The position advanced by Twea JA is problematic and contradicts some of his own findings. First, he ignored sections 81(4) and 83(1) of the Constitution, which mandate the president and the first vice-president to hold office until their successors are sworn in. In the case before the High Court, the then incumbent, President Peter Mutharika and his Vice-President Saulos Chilima did not have to cease governing until they handed over power to their lawfully elected successors,

which would take effect when the latter were sworn in. The declaration of undue election faulted only the result of the elections held in May 2019 and not the mandate from which President Mutharika and his Vice-President Chilima derived when they assumed their presidency in 2014, which sections 81(4) and 83(1) of the Constitution recognise and save until a handover of power.

Second, since the constitutional scheme under sections 81(4) and 83(1) extends this mandate to avoid a vacuum, Twea JA's argument that the cabinet appointed by an unduly elected president would appoint an acting president and acting vice-president is irreconcilable with these provisions. Twea JA's position was that a cabinet that would appoint an acting president and acting first vice-president would have been the one in place before the presidency became voidable. According to him, the presidency becomes voidable the moment that a petition is filed challenging the due return or election of a candidate. In this regard, Twea JA argued that the cabinet appointed by President Peter Mutharika before the filing of the petition should have taken action under section 85 of the Constitution. Strangely, Twea JA's analysis does not address the question why the presidency cannot continue pursuant to sections 81(4) and 83(1), but instead the cabinet appointed by the very president who would cease to hold office should appoint caretakers to govern. This position fails to appreciate that the continuation of incumbents is by operation of the law under sections 81(4) and 83(1). The High Court, therefore, correctly found that the election was void ab initio and the presidency reverted to its position before the assailed election.

Concurrent Holding of Presidential and Parliamentary Elections

Holding a fresh presidential election after a scheduled general election distorted the electoral calendar. The May 2019 general election elected members of the National Assembly, the president and the first vice-president. The declaration of an undue return and election nullified only the presidential election. While the National Assembly survived and began its mandate, a new presidential mandate remained in abeyance. This created a discrepancy between the life of the National Assembly and the presidential term of the successful candidate in the fresh presidential election. Yet, section 80(1) of the Constitution provides for the concurrent election of the president and members of the National Assembly. Mindful of this gap, and the need to preserve electoral concurrency, the High Court recommended that the National Assembly should consider extending the term of the incumbent members of the National Assembly and shift the election date from May to July.

The Supreme Court noted this recommendation and only observed that the High Court was entitled to hold this view. However, Twea JA held a different view. His starting point is that the High Court's directive purports to find that the

presidential term is affected by presidential elections. He located his analysis in section 77 of the Constitution, which recognises five types of elections, namely a general election, by-election, presidential election, local government election and referendum. He then explained the three instances where a presidential election can be held other than by a general election under sections 54(d), 100 and 114 of the PPEA, namely where a candidate dies before a poll begins; where a court declares an undue return or election; and where, on appeal against a complaint lodged before the Electoral Commission, the High Court declares the election void.

Twea JA then delved into tenure of the president to solve the conundrum of holding concurrent elections. On this point, he argued that pursuant to sections 67(1) and 80(1) of the Constitution, 'tenure of the President runs from one general election to the next, which is called a term' (*Chilima Case - MSCA*, p.140). He then held that a declaration of undue return or election under section 100 creates a vacancy that should be filled by holding a fresh presidential election and the 'candidate returned and his running mate cease to have the right to occupy the office of the President' (*Chilima Case - MSCA*, p.141). Twea JA then found that the person elected during the fresh presidential election fills a vacancy and, therefore, should serve a non-term presidency. He argued that this is similar to a vacancy that arises in the National Assembly where a member serves the remainder of the term of that parliament. Accordingly, this averts the need to amend the Constitution to create a full-term presidency and ensure concurrent presidential and parliamentary elections.

As noted earlier, his opinion misconstrues the distinct vacancies that can arise in the presidency under the current constitutional scheme. A declaration of an undue return or election under section 100 of the PPEA, as earlier alluded to, creates a de jure vacancy but the incumbents continue to serve until their successors are sworn-in, pursuant to sections 81(4) and 83(1) of the Constitution.

According to Twea JA, a declaration of undue election or return under section 100 of the PPEA voids the presidency from the time of the declaration, as opposed to it being void ab initio. Accordingly, the candidate who is sworn in as president following elections that are later nullified begins a term of office such that a candidate elected in subsequent fresh presidential elections continues the remainder thereof and serves a non-term presidency. This position is untenable because it implicitly validates the ascendancy to the presidency of an unduly elected person.

Twea JA also argued that based on sections 67(1) and 80(1) of the Constitution, tenure of office of the president is determined from one general election to the next one. This suggests that there can never be a full presidential term where a candidate is elected in a fresh presidential election. Accordingly, the presidential term of five years took effect after the general election held in May 2019 when the successful candidate took oath of office, irrespective of the subsequent declaration

of undue return and election. Consequently, the nullification of the presidential election did not affect the presidential term such that the candidate elected president during the fresh presidential election would only serve the remainder of that term. Strangely, Twea JA used the constitutional provisions governing the term of the National Assembly and the requirement for concurrent holding of presidential and parliamentary elections to determine presidential tenure.

Unsurprisingly, Twea JA's proposition is irreconcilable with the provisions of the Constitution that specifically deal with tenure of office of the president. Sections 83(1) and (2) provide that the president holds office for five years from the time an oath of office is administered until a successor is sworn in. The first vice-president and second vice-president hold office from the date of administration of the oath of office until the end of the president's term, unless their offices end sooner in accordance with the Constitution. Unlike the presidency, members of the National Assembly, which Twea JA used as a comparator to justify the serving of the remainder of the term, do not per se have an individual tenure of office. As noted earlier, their term of office is determined by the life of the National Assembly under section 67(1) of the Constitution. Twea JA's attempt to address concurrency in presidential and parliamentary elections was to subject presidential tenure to the life of the National Assembly while ignoring the clear dictates of sections 81(4) and 83(1) of the Constitution. A serious constitutional question arises regarding whose term the person elected in a fresh presidential election will be serving the remainder thereof if it is conceded that the then incumbent ceased to occupy the office. Clearly, it cannot be argued that holding a general election and taking an oath of office by an unduly elected candidate determines the beginning of a presidential term of office. On this point, the High Court correctly recommended that the National Assembly should consider extending 'the term of the incumbent members of the National Assembly' to preserve electoral concurrency (*Chilima Case-HC*, para. 1484(b)).

THE LITIGATION AND ITS AFTERMATH

The two judgments brought into focus issues related to the conduct of elections in Malawi, two of which are discussed below.

The Judicial Resolution of Electoral Disputes

The two judgments brought to prominence the need to resolve electoral disputes timeously. The expedited resolution of electoral disputes is acknowledged under Order 19 of the Courts (High Court) (Civil Procedure Rules) 2017 (CPR).

The Supreme Court also confirmed that ‘... electoral matters are urgent matters and electoral disputes must be resolved expeditiously’ (*Chilima Case -MSCA* pp.120- 121).

Under Order 19 of the CPR, the law envisages the conclusion of an electoral dispute in about 27 days. This timeframe was not adhered to in the *Chilima Case-HC* as it took about eight months to conclude the case. When the Supreme Court delivered its judgment, the entire litigation had lasted eleven months. This was an inordinate delay. The uncertainty engendered in relation to the presidency was not ideal. The delay could, however, be attributed to the voluminous documentary evidence and oral testimony before the High Court.

Three possible solutions could be employed in future to expedite electoral dispute resolution. First, the High Court should resolve such disputes on the basis of the parties’ sworn statements and only permit examination of witnesses exceptionally – if witnesses are allowed, the time permitted for their testimony should be seriously controlled. Second, amendments to electoral laws should be effected so that the Supreme Court is the court of first and last instance for electoral disputes involving the presidency. Third, every effort should be employed, especially by the Courts, to enforce compliance with the timelines for the management of electoral disputes as prescribed under the CPR.

The Need for Electoral Law Reform

Both the High Court and the Supreme Court conceded that there is need for electoral law reform and suggested some areas for reform. These include the delegation of authority by the Electoral Commission under section 9 of the Electoral Commission Act. This was against the background of the High Court’s finding that the Electoral Commission could not delegate its quasi-judicial powers. Parliament was also called upon to develop legislation to ensure that the winner of the fresh presidential election can serve the constitutionally prescribed five-year term. Recommendations were also made to amend the Constitution to accommodate the interpretation of ‘majority’, in section 80(2) of the Constitution, to mean 50% + 1 and to provide for the procedure to hold runoff elections.

Ironically, in the run-up to the 2019 general elections, the Malawi Law Commission proposed a raft of recommendations to reform the electoral law framework similar to some of the directions given by the High Court that were also endorsed by the Supreme Court (Cf. Malawi Law Commission, 2017). Poignantly, one of the recommendations was to change the system for electing the president to a 50% + 1 system. Barring a few cosmetic changes, the reform proposals were rejected by the National Assembly (Chitete 2020). In hindsight, the country could have been spared the expense of a fresh election and the attendant political turmoil

if parliament had, early on, adopted the 50% + 1 system, together with relevant provisions to govern a runoff.

CONCLUSION

The hallmark of the litigation challenging the 2019 presidential election remains the decision to nullify the presidential election result and to order a fresh one. Overall, the judgments of the High Court and Supreme Court represent significant developments in electoral law in Malawi. Notwithstanding the clarity that they provide on numerous electoral questions, there are issues where both courts could have applied themselves more rigorously in order to interpret the law correctly. In this article, an attempt was made to conduct a balanced analysis of some of the key issues that arose. Although the judicial intervention in the May 2019 elections has been applauded globally, the unfastidious and pedestrian approach to some of the crucial findings will continue to eclipse the courts' jurisprudential effort. Overall, it is clear that the judicial intervention that resulted in the nullification of the May 2019 presidential election was not a judicial coup d'état, considering the overwhelming evidence of systematic and widespread electoral irregularities presented to the High Court. This evidence was a clear invitation for the courts to pronounce themselves on the integrity of the electoral processes in fulfilment of their constitutional mandate.

———— REFERENCES ————

- ACE Encyclopedia, <http://aceproject.org/main/english/bd/bda01b.htm>, (viewed 2 August 2020).
- AFP, 'Malawi president lashes out against poll nullification', <https://www.barrons.com/news/malawi-president-lashes-out-against-poll-nullification-01590840004>, (viewed 22 August 2020).
- Associated Press 2020, 'The electoral college vs the popular vote in the USA', <https://www.sltrib.com/news/nation-world/2020/09/14/electoral-college-vs/> (viewed 14 October 2020).
- Attorney General v MCP* [1997] 2 MLR 181 (SCA).
- Besigye v Museveni et al* (2001) Election Petition No. I of 2001 (Supreme Court of Uganda).
- Chitete, S, 'Electoral reforms flop', <https://www.mwnation.com/electoral-reforms-flop/>, (viewed 13 October 2020).
- CMI, 'Playing the ethnic card: The political game in Malawi', <https://www.cmi.no/news/1487-playing-the-ethnic-card>, (viewed 7 August 2020).

- Commercial Bank of Malawi v Mhango*, MSCA, Civil Appeal No. 8 of 2001, http://www.sdn.org.mw/judiciary/civil/CBM_Edger_Mhango.htm, (viewed 26 July 2020).
- de Freytas-Tamura, K 2017, 'Kenya Supreme Court nullifies presidential election', *New York Times*, <https://www.nytimes.com/2017/09/01/world/africa/kenya-election-kenyatta-odinga.html>, (viewed 17 August 2020).
- Dworkin, R 1975, 'Hard cases', *Harvard Law Review*, Vol. 88(6) pp. 1057-1109.
- Foodco UK LLP v Henry Boot Developments Ltd* 2010] EWHC 358 (Ch).
- Garner, B 2009, (ed) *Black's Law Dictionary*, West, St Paul.
- Gwanda Chakuamba and others v Electoral Commission* MSCA Civil Appeal No. 20 of 2000.
- Hatchard, J, Ndulo, M & Slinn P 2004, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective*, Cambridge University Press, Cambridge.
- Hatchard, J 2015, 'Election petitions and the standard of proof', *Denning Law Journal*, Vol 27 pp. 291–302.
- Hornal v. Neuberger Products Ltd* [1957] 1 Q.B. 247.
- In re H (Minors)* [1996] AC 563.
- Kadima, D 2003, 'Choosing an electoral system: Alternatives for the post war Democratic Republic of Congo', *Journal of African Elections*, Vol. 2, No. 1, pp. 33–47.
- Kanyongolo, F 2006, 'Courts, elections and democracy: The role of the judiciary' in M Ott et al. (eds) *The Power of the Vote: Malawi's 2004 Parliamentary and Presidential Elections*, Kachere Series, Zomba.
- Kanyongolo, F 2015, 'The legal framework of elections' in Patel N and Wahman M (eds) *The Malawi 2014 Tripartite Elections: Is Democracy Maturing?*, NICE, Lilongwe.
- Lante Wallace-Bruce, N 1993, 'The standard of proof for crime in civil proceedings: A Ghanaian perspective', *International and Comparative Law Quarterly*, Vol. 42, No. 1, pp. 157–166.
- Loughlin, M 2020, *Foundations of Public Law*, Oxford University Press, Oxford.
- Malawi Law Commission 2017, *Report of the Law Commission on the Review of the Electoral Laws*, Government Print, Lilongwe.
- Malawi Parliament 2013, *Standing Orders*, Government Print, Lilongwe.
- Matonga, G, 'Malawi's Supreme Court affirms nullification of presidential election' <https://mg.co.za/africa/2020-05-08-malawis-supreme-court-affirms-nullification-of-presidential-election/>, (viewed 17 August 2020).
- Ng'ong'ola, C 2002, 'Judicial mediation in electoral politics in Malawi' in H Englund (ed.) *A Democracy of Chameleons: Politics and Culture in the new Malawi*, CLAIM, Blantyre.

- Nkhata, M 2010, *Rethinking Governance and Constitutionalism in Africa: The Relevance and Viability of Social trust -based Governance and Constitutionalism in Malawi*, [PhD Thesis], University of Pretoria, Pretoria.
- Peter Mutharika and Electoral Commission v Saulos Chilima and Lazarus Chakwera* Constitutional Appeal No. 1 of 2020 (MSCA).
- Phoso v. Malawi Electoral Commission* [1997] 1 Malawi Law Report 201.
- Saulos Chilima and Lazarus Chakwera v Peter Mutharika and Electoral Commission* Constitutional Reference No. 1 of 2019, HC (LL).
- Schweizer, M 2016, 'The civil standard of proof – What is it, actually?' *International Journal of Evidence and Proof*, Vol. 20, No. 3, pp. 217-234.
- State v Zuma* [1995] 2 SALR 642.
- Webb, H 1998, 'The Constitutional Court of South Africa: Rights interpretation and comparative constitutional law', *Journal of Constitutional Law*, Vol. 1, No. 2, pp. 205–283.

WOMEN'S REPRESENTATION IN LESOTHO'S LEGISLATIVE BODIES

A Politico-Legal Analysis of the Effectiveness of Electoral Gender Quotas

Hoolo 'Nyane and Mamello Rakolobe

Hoolo 'Nyane is Associate Professor and Head of Department of Public and Environmental Law, University of Limpopo

Mamello Rakolobe is a lecturer in the Department of Political and Administrative Studies, National University of Lesotho and PhD candidate, University of Botswana

ABSTRACT

Women are under-represented in legislative bodies in the majority of countries, and Lesotho is no exception to this worldwide trend. In an attempt to address this problem, the country has adopted, through electoral laws, electoral gender quota systems for both local and national legislative structures. The country has introduced a 30% gender quota requirement for election to the local councils at the local level. At the national level, it introduced a 'zebra list' – the condition that when political parties submit lists for the purposes of 40 proportional representation (PR) seats in the National Assembly, the names must alternate between those of men and women. The idea was to attain 50% representation of women in the National Assembly, at least for the 40 PR seats. The effectiveness of these two quota systems in enhancing women's representation has been the subject of intense disagreement. The animating question is whether, since the adoption of gender quotas, the representation of women in legislative bodies has improved. The article investigates this question using the qualitative content analysis method. The central hypothesis is that electoral gender quotas in Lesotho, particularly at the national level, have not significantly improved the representation of women. The paper critiques the models used and makes some recommendations for reform.

Keywords: electoral gender quotas, Lesotho, National Assembly Electoral Act, Local Government Elections Act, National Assembly, local councils, electoral system

INTRODUCTION

The under-representation of women in public decision-making structures is a global phenomenon. Women constitute less than half of the representatives in legislative bodies at all levels (UNWomen 2021). The problem does not appear to be abating: the most recent data suggests that the global representation of women in legislative structures is at 25.5% (IPU 2021). Disaggregated by regions, women representatives constituted 32.4% in the Americas, 30.4% in Europe, 20.4% in Asia and 24.9% in sub-Saharan Africa (IPU 2021). The Nordic countries – Denmark, Finland, Iceland, Norway and Sweden – constitute the only sub-region that is close to achieving gender parity in legislative bodies, with women comprising about 43% of the members of parliament. In Africa, Rwanda has been the most successful in achieving gender parity, with 56% women's representation in parliament.

Studies demonstrate a slight improvement in women's representation in legislative bodies globally, compared to a decade ago (Atske, Geiger & Scheller 2019). A decade ago, the rate hovered at around 18%. This modest improvement notwithstanding, the problem of under-representation persists.

Lesotho is no exception to this phenomenon as women are under-represented at both the national and local levels. As of 1 January 2021, the National Assembly comprised 23% women, while the percentage of women in the Senate stood at 21% (IPU 2021). The percentage of women local councillors was 40% after the 2017 local government elections (Gender Links 2017). The statistics for the national and local levels indicate that women are profoundly under-represented in legislative bodies in Lesotho, despite the fact that the country has electoral gender quotas at both the national and local levels.

The country introduced the 'zebra-list' model for the 40 proportional representation (PR) seats in the National Assembly (National Assembly Electoral Act 2011). The law prescribes that when a political party submits its list of PR candidates, the candidates must not only appear in order of preference, but women must alternate with men on the list. This electoral gender quota is limited to 40 out of 120 seats in the National Assembly.

The country has a 30% quota system at the local level to ensure women's representation in the local councils (Local Government Elections Act 1998). In the first democratic local government elections in 2005, the quota proved to be effective as the rate of women's representation in local councils was 58%. However, the rate could not be sustained in the next elections, raising questions about whether the high rate observed in the first elections was attributable to the electoral gender quota. The rate gradually declined to 49% and 40% after the 2011 and 2017 elections, respectively (Gender Links 2017). A similar downwards trend is observable at the national level. In the National Assembly, the rate had been steadily dropping

from an impressive 27% in 2012, to 25% in 2015. After the 2017 national elections, the presence of women plummeted to 23% (Gender Links 2017).

This picture raises the issue of whether electoral gender quotas effectively enhance female representation in Lesotho's legislative bodies. An ancillary question is whether the type of electoral gender quotas that the country has chosen is problematic or whether electoral gender quotas should be jettisoned altogether, with other models being devised to enhance women's representation in legislative bodies. These questions form the central enquiry in this study. The study proceeds from the primary hypothesis that electoral gender quotas in Lesotho, particularly at national level, have not been effective in enhancing sustainable gender parity in legislative bodies in the country.

The paper is structured as follows: the first section focuses on the methodology and delimitation of the study. The second section provides the conceptual and theoretical framework for this study. The third section presents the legal framework for gender quotas in Lesotho. The fourth section assesses the performance of quota systems at both the national and local levels. The final section concludes the paper and makes recommendations for reform.

METHODOLOGY AND DELIMITATION OF THE STUDY

Since the phenomenon that this study deals with requires impressionistic, intuitive, interpretive or strictly textual analysis, the most appropriate method is qualitative content analysis (Rosengren 1981). As a research methodology, particularly in social sciences, content analysis has only recently started to gain traction. It becomes the most suitable method where the content of messages in any instrument becomes the basis for inferring or drawing conclusions about particular content (Nachmias & Nachmias 1996). In this study, the critical data are statistics already collated from other sources – legal instruments and patterns in literature. The study thus draws inferences from the interpretation of available data.

Another justification for the choice of content analysis is that it straddles the two main disciplines – political studies and legal studies – that directly impact the study. It therefore permits the interdisciplinarity that is necessary to undertake a study of this nature. Youngblood's approach is premised on the conviction that '[n]o discipline is an island entirely in itself. That is to say, disciplines are by no means discrete entities – they necessarily overlap, borrow, and infringe upon one another' (Youngblood 2007, p. 1). Conceptually, multidisciplinary (or interdisciplinarity) is a research approach in which 'members of two or more disciplines cooperate, using the tools and knowledge of their disciplines in new ways to consider multifaceted problems that have at least one tentacle in another

area of study' (Youngblood 2007, p. 2). It draws from the strengths of two or more disciplines in analysing a single phenomenon or multiple phenomena with interconnectedness.

The study is very limited in scope; it deals solely with electoral gender quotas and how they have performed in Lesotho. It does not deal with the broad issues of women's representation or gender parity generally in Lesotho. Nor is the study so much about the substantive empowerment of women legislators or female representatives who have attained public office. Other studies have focused on the broader issues of gender disparity and the empowerment of women in public institutions in Lesotho (Kali 2018; Clayton & Zetterberg 2018; Ramakhula 2019). These studies are almost unanimous in finding that there is a palpable disparity in Lesotho, both formally and substantively. The gap which this study seeks to fill is determining whether electoral gender quotas, as a remedial measure for the under-representation of women in politics, are effective. The representation of women in parliament has implications for women in the executive branch of government, but the study touches only tangentially on the executive branch of government; the executive is not the main focus of the study.

CONCEPTUAL AND THEORETICAL FRAMEWORK

Problematizing Electoral Gender Quotas

A balanced political representation of various groups in a political system is considered an indicator of democracy around the world (Kalaramadam 2018, p. 2). Political representation is essential in two strands of democracy – representative democracy and participatory democracy. Representative democracy focuses on the quantitative (descriptive) representation of all groups in public decision-making bodies while participatory democracy is concerned with the qualitative (substantive) aspect regarding the incorporation of the experiences and the interests of the represented (IDEA 2021, p. 17).

Descriptive representatives mirror some of the more frequent experiences of the group(s) they represent (Mansbridge 1999, p. 629) and consequently influence legislative decision-making that is inclusive of the broader set of political voices and legitimises policy-making in democracies (Arnesen & Peters 2018, p. 869). Additionally, descriptive representation of women in legislative bodies is a matter of justice and equity (Carroll, Dodson & Mandel 2001, p. 2).

Despite the importance of descriptive representation, some scholars point out that the mere presence of the representatives of marginalised groups in legislative bodies may not be sufficient in influencing policy outcome in favour of the represented (Phillips 1995; Weldon 2002). Substantive representation depends on several factors such as the acts of the 'critical actors' and the institutional

framework (Chaney 2012, p.442), and the fact that women are not a homogenous group (Dovi 2007, p. 311).

Notwithstanding the criticism against descriptive representation, countries worldwide have been under pressure to increase the participation of women in political processes. A variety of measures have been employed to increase women's representation. One such method, which is presently at the height of the political discourse, is electoral gender quotas. Electoral gender quotas reserve certain seats or positions in legislative bodies for female representatives (McCann 2013, p. 4; Kurebwa & Ndlovu 2017, p. 50). These legislative strategies are meant to boost the representation of female political decision-makers (Fernández & Valiente 2021, p. 352). They have emerged as arguably the most prevalent mechanism for fast-tracking gender equality, representative government and women empowerment as a developmental goal (El-Helou 2009, p. 2).

One of the most persuasive theories undergirding electoral gender quotas is the critical mass theory (Broome, Conley & Krawiec 2011, p. 1053). The theory posits that a group begins to be transformative only when a critical mass is reached (Yang, Yang & Gao 2019, p. 3453), because the nature of group interactions depends upon the size of each group. The qualitative change in groups occurs once the group attains a certain proportion, as the minority can assert itself and transform the institutional culture (Norris & Lovenduski 2001, p. 2). Hence, the presence of a substantial proportion of women in public decision-making structures is expected to transform the political discourse, policy agenda and institutional culture (ibid.). The required proportion for a minority group to make a difference is 30% (Dahlerup 1988, p. 275). As Childs and Krook (2008, p. 725) contend, women can have a significant impact on legislative outcomes only if their numbers increase from being a few token appointments into a substantial minority, as that will enable them to work together to promote pro-women policy outcomes.

Quotas take several forms, namely voluntary political parties and constitutional or legislated quotas (McCann 2013, pp. 7-8; Kalaramadam 2018, p. 2). Constitutional or legislated candidate quotas are entrenched in constitutions or electoral laws. Such quotas dictate that political parties must fulfil a particular gender quota in their electoral lists. Voluntary party quotas are adopted at the level of candidate selection and nomination by parties, by requiring that a certain minimum percentage of the candidates for election are reserved for women (Kethusegile-Juru 2004, pp. 22-23). The requirements are usually stipulated in the constitutive rules of each political party (ibid.).

Although electoral gender quotas have been lauded as an effective policy for bolstering the presence of women in politics, they are also highly controversial. They have been criticised for rendering the beneficiaries of the quota system inferior to non-quota representatives (Solyom 2020, p. 4). The beneficiaries of the quota policy are said to occupy the places of more qualified men (ibid.). Gender

quotas are also regarded as undemocratic and contravening the equality principle, as women are elected on the basis of their gender and not their credentials (Goulding 2009, p. 73). Liberalists also reject quotas, stating that they undermine the principle of equal opportunity for all as they favour women and deny men an equal chance to establish a political career (Dahlerup & Freidenvall 2005, p. 30). Quotas are also derided for restricting voters' choices (Guadagnini 2005, in Kalaramadam 2018, p. 3).

These criticisms notwithstanding, proponents argue that quotas have had a desirable effect on the presence of women in politics. For instance, Clayton (2021, p. 236) asserts that many quota-adopting countries have made remarkable progress in very short periods of time, doubling or even tripling women's legislative representation in the first post-quota election. For instance, as of 1 January 2021 seven of the top ten countries for the representation of women in single or lower houses have put a quota system in place, while the bottom five have no quota system at all (see Table 1 below).

Table 1: Ten highest-ranked and five lowest-ranked countries for women's parliamentary representation in the single or lower house in 2021

| RANK | COUNTRY | % OF WOMEN | QUOTA |
|---------------------------------|----------------------------------|------------|-------|
| Highest ranked countries | | | |
| 1 | Rwanda | 61.3 | Yes |
| 2 | Cuba | 53.4 | No |
| 3 | United Arab Emirates | 50.0 | Yes |
| 4 | Nicaragua | 48.4 | Yes |
| 5 | New Zealand | 48.3 | Yes |
| 6 | Mexico | 48.2 | Yes |
| 7 | Sweden | 47.0 | Yes |
| 8 | Grenada | 46.7 | No |
| 9 | Andorra | 46.4 | No |
| 10 | Bolivia | 46.2 | Yes |
| Lowest ranked countries | | | |
| 184 | Nigeria | 3.6 | No |
| 185 | Oman | 2.3 | No |
| 186 | Kuwait | 1.5 | No |
| 187 | Yemen | 0.3 | No |
| 188 | Micronesia (Federated States of) | 0.0 | No |

Source: Data from IPU Parline (available at <https://data.ipu.org/content/parline-global-data-national-parliaments>)

Furthermore, advocates contend that quotas do not necessarily discriminate but compensate women for the barriers that prevent them from participating in politics (Kurebwa & Ndlovu 2017, p. 53). El-Helou (2009, p. 2) argues that a gender quota is instrumental as a temporary measure to break down the social, cultural and political barriers to gender equality. Quota policies diversify parliaments and influence the prioritisation of policy areas in favour of the historically marginalised groups (Clayton & Zetterberg 2018). Additionally, the problems associated with the under-representation of women outweigh the shortcomings resulting from the adoption of gender quotas, because equal representation is necessary to improve democracy and enhance the substantive representation of women (Solyom 2020, p. 2).

In an attempt to increase the number of women in decision-making bodies and reap the benefits thereof, countries have individually and collectively established legal and institutional frameworks for gender equality. Electoral quotas have been very popular as the single most important avenue for the increased participation of women in political structures in general, and in legislative bodies in particular.

Factors that Influence the Effectiveness of the Gender Quota System

Several factors influence the effectiveness of quotas in the political system. They interact positively and negatively with numerous features of the broader political context and consequently do not simply lead to gains proportionate to the quota policy (Krook 2009, p. 11). For instance, the size of the quota, the electoral system, party rules and magnitude have a bearing on their propensity to enhance women's descriptive representation in legislative bodies.

Quota size is the most important characteristic of gender quotas that increase women's representation on their own (Schwindt-Bayer 2009, p. 17). Quotas are more effective when they are set at a high threshold, usually requiring that party lists comprise an equal proportion of men and women (parity quotas). The level of the goal set by a quota is directly related to the level of representation achieved, that is, countries that have set higher quota targets have achieved higher representation of women (Sojo, Wood, Wood & Wheeler 2016, p. 533).

The effectiveness of the quota policy is determined by the electoral system in use within a political system (Larsrud & Taphorn 2007, p. 10). In Latin America, the success of electoral gender quotas has been influenced by institutional factors which are at times unrelated to the quota laws, such as the electoral system (Sacchet 2018, p. 33). On the whole, the efficacy of the quotas has been evident in countries using the PR electoral system (Kethusegile-Juru 2004, p. 15). Despite its limitations, such as resulting in unstable coalition governments and weakening

the link between the representatives and the constituencies (ACE, 2021), globally about twice as many women access national parliaments under the PR system (19.6%) than under majoritarian electoral systems (10.5%), while 'mixed' electoral systems fall between these two at 13.6%. Clearly, therefore, women are almost twice as likely to be elected to the legislature under the PR system as under majoritarian electoral systems (Norris 2006, p. 41). Combining a PR system with a legislated quota is the most powerful strategy for achieving gender parity in politics (Kethusegile-Juru 2004, p. 24; Tamale 2004, p. 42). Therefore, legislative bodies with the highest representation of women (for example, South Africa and Norway) often have parity quotas in a PR system (Clayton 2021, p. 238).

One factor that determines the success of the PR system in enhancing the representation of women in the legislature is the size of the political parties (Larsrud & Taphorn 2007, p. 10). Political parties tend to fill the first slots on the candidate lists with male candidates (usually party leaders). The larger the party, the better the chances for women to get into parliament, as parties will then fill their second and subsequent seats with candidates other than their absolute top candidates. The party will be larger if the districts are large and if the number of parties that are allocated legislative seats is relatively low. If a party is small, this will negatively affect the representation of female politicians in the legislature, unless women are placed at the top of the party list (*ibid.*).

Another vital requirement for quotas to be effective is the willingness of political parties to implement a quota policy in the first place (Bjarnegård & Zetterberg 2016, p. 395). The achievement of the objectives of the quotas also depends on good faith conformity by political parties (Htun & Jones 2002, pp. 36-43, in Schmidt & Saunders 2004, p. 706). Parties can contribute to the effectiveness of the quota policy by establishing formal rules that reserve a certain proportion for women among the party's candidates. This could take the form of either a quota (mandated percentages of women) or a target (recommended percentages of women) (Caul 1999, p. 83). While quotas are indeed useful, political parties could reinforce their effectiveness by ensuring that their structures and culture allow and encourage women to stand for office (Kethusegile-Juru 2004, p. 24). Otherwise, political entities, especially the male members usually disadvantaged by quotas, frequently act strategically to sidestep the intended impact of quotas on leadership outcomes (Pande & Ford 2011, p. 3). Such an act not only reflects the acknowledgement that the under-representation of women in politics is a problem, but it also indicates a willingness to address the problem (*ibid.*).

Furthermore, quotas at times result in unintended outcomes as they somehow relieve the political parties of their responsibility to remove obstacles to the entry of women to the legislative bodies (Meena 2004, pp. 84-85). This is

because of a misconception that since women have access to parliament through the quota system, they should not stand for the open seats (Kabuni & Agon 2021, p. 4). The quota seats erode the competitive 'power' of women to enter the representative organs of the state in the 'normal' way (Tamale 2004, p. 42).

In addition, the way the quota law is worded also affects the effectiveness of the quota policy (ibid.). For instance, when the quota law says 'at least one of the offices ... shall be held by a female', in practice, this is usually interpreted to mean 'the maximum number'. This unintentionally creates a glass ceiling, preventing women's representation from exceeding the stated quota.

The following section presents the legal framework for electoral gender quotas in Lesotho.

ANALYSIS OF THE LEGAL FRAMEWORK FOR ELECTORAL GENDER QUOTAS IN LESOTHO

Electoral Gender Quota Law at National Level

Lesotho has joined the global wave to introduce electoral gender quotas. It is important to note that the Constitution of Lesotho, 1993 does not have an express electoral gender quota in its original text, for either parliamentary or local government elections. However, it may be argued that its text has always indirectly envisaged that measures might be taken to affirm groups in society that have been previously disadvantaged. Section 18(4)(e) of the Constitution therefore contemplates that laws or measures may be taken to promote 'a society based on equality and justice for all the citizens of Lesotho, thereby removing any discriminatory law'. And such measures will not be regarded as violating the freedom from discrimination provided for under the section. In other words, the Constitution permits positive discrimination in the form of affirmative action measures (Viljoen & Nsibirwa 2006). This view was confirmed by both the High Court and the Court of Appeal in the celebrated decision of *Molefi Ts'epe v The Independent Electoral Commission and Others* (2005). In this case, the introduction of electoral gender quotas for local government in 2005 was challenged as being unconstitutional, in that it violated both freedom from discrimination and the right to equality as provided for in sections 18 and 19 of the Constitution, respectively. The Court of Appeal disagreed and held that the measure – the reservation of 30% of the seats in local authorities for women – is based on section 18(4)(e) of the Constitution and is therefore permissible.

The original texts of the 1993 Constitution and the 1997 Local Government Act were based on the constituency-based electoral system – an electoral model renowned for being unfriendly towards the representation of marginalised groups

in general and women in particular (Matlosa 2008). The original section 57(1) of the 1993 Constitution provided that Lesotho shall 'be divided into constituencies and each constituency shall elect one member to the National Assembly'. As demonstrated later in this research, female representation was very low under the constituency-based system.

In 2001 the country introduced the Fourth Amendment to the Constitution to usher in a new electoral system that replaced the majoritarian model with the mixed member proportional (MMP) electoral system (Nyane 2017). Even then, there was still no express provision for electoral gender quotas. The Fourth Amendment retained the 80 constituencies whose representatives are elected through the majoritarian system, but expanded the erstwhile 80-member National Assembly to 120 members. The additional 40 members are elected in accordance with the principle of proportionality applied to the National Assembly as a whole.

The cardinal principle of the MMP model is contained in section 57 of the Fourth Amendment, which states that 'forty members [are] to be elected to party seats in accordance with the principle of proportional representation applied in respect of the National Assembly as a whole'. The amendment never included a requirement for electoral gender quotas. However, it introduced proportionality to the electoral system in Lesotho. As Elklit observes, 'the MMP system is however a genuine PR system as all seats are included in the conscious attempt to reach a proportional result through the use of [a] strong compensatory mechanism' (Elklit 2008, p. 13). In general, proportionality-based electoral systems are reputed to be friendlier to women's representation than the constituency-based electoral systems (Matlosa 2008). However, the proportionality-based electoral systems are often criticised for being weaker on the accountability of elected representatives in comparison to constituency-based electoral systems. In South Africa for instance, despite an impressive gender representation (Goetz & Hassim 2003), there is a strong call to move away from a pure proportional representation model (Nijzink & Piombo 2005).

The newly adopted constitutional principle of proportionality was operationalised through the National Assembly Election (Amendment) Act of 2001. Section 49B of this Act provided that a political party intending to contest elections may 'nominate candidates for election by proportional representation'. The first election to be held under this model in Lesotho was in 2002. As will be demonstrated later, the representation of women started increasing with this election, although there were no electoral gender quotas.

In the run-up to the 2007 parliamentary elections, the country took a bold decision and introduced an electoral gender quota through the electoral law. For the first time, the law made it a condition that when political parties submit lists for

elections to the 40 PR seats in the National Assembly, the lists must alternate the names of males and females – if the list starts with a man, the following candidate must be a female. These lists came to be known colloquially as ‘zebra lists’.

It is important to note that the law introducing electoral gender quotas at the national level has three fundamental deficiencies which will make it difficult, if not impossible, to attain even a mere 30% representation of women in parliament. Firstly, the law is limited to only 40 PR seats in a 120-member chamber. Even before they are shared between men and women, the seats in themselves only constitute about 33% of the entire National Assembly. Indeed, the 80 constituency seats are open to both genders, and some women do occupy them. But still, the constituency-based leg of the electoral system has proven not to be favourable for women.

Another deficiency with the law is that it does not make it a requirement that the first person on the list should be a female. Consequently, a political party’s first candidate on the list is the party leader, who invariably is a male. Therefore, when a party sends only one candidate to parliament, which is often the case with smaller parties, it is a male. Or, where the party sends an odd number of candidates to parliament, males will invariably be in the majority.

The third problem with the law is that it does not say anything about the Senate, the upper chamber of Parliament. This chamber has 33 members, 22 of whom are principal chiefs, and the king appoints 11 other members on the advice of the Council of State. With the principal chiefs being hereditary, and given the primogeniture rule as a guideline to succession to the chieftainship in Lesotho, it is to be expected that the majority will be males. Hence, the female representation in this chamber has been deplorably low, hovering at around only 5%.

Electoral Gender Quota Law at Local Level

When the country passed the Local Government Act and the Local Government Elections Act in 1997 and 1998, respectively, electoral gender quotas were not envisaged. The legal framework was based on the majoritarian electoral system in line with the system used for national elections at the time. When the local government elections that were scheduled for 2005 were approaching, the idea of a quota was adopted, and the legal framework for the elections had to be amended. The law was amended to provide for the 30% quota for women in all councils. Attaining this created much controversy. The law provided that one-third of the seats in each council had to be reserved for women (Local Government Elections (Amendment) Act 2005: section 26(1)A (a) and (b)). This meant that in some electoral divisions – those reserved for women – men would be completely debarred from standing for election. This method of implementing the 30% quota

generated considerable controversy. The main argument was against the method of implementing it, and not necessarily against the quota itself. It was argued that the quota could be implemented and still achieve the same outcomes without preventing men from standing (Shale 2012).

The main argument against the reservation of the election division model of attaining the 30% representation of women is that it violates the right of men to stand for elections. It was argued that, to the extent that implementing the quota is not the least intrusive measure into the rights of men, it is unconstitutional (Shale 2012). This controversy reached its height in *Molefi Ts'ephe v The Independent Electoral Commission and Others* (2005). Both the High Court and the Court of Appeal rejected the argument that implementing the quota was unconstitutional, but both courts missed the point in this case. They misconstrued it as a case against the 30% quota for women. In fact, the case was not opposed to the quota itself, but against the method of implementing it.

Indeed, the 2005 local government elections were held under the same law that reserved one-third of electoral divisions in the councils. The outcome of the elections with regard to women's representation was astounding. Women's representation surpassed the anticipated 30% by far and reached a staggering 58%.

The proponents of an alternative method were later vindicated in the next election when the country decided to change the model from the reservation of seats to introducing special seats in the councils. The change of model was influenced by the same argument that initially failed in both the High Court and the Court of Appeal – that the 30% quota could be implemented through a model that intrudes less into the right of men to stand for elections (Shale 2012). In the run-up to the 2011 local government elections, the law was changed again to abolish the idea of reserved seats and introduced special seats (Local Government Elections (Amendment) Act 2011). The special seats are proportionally allocated to political parties that contested elections in the councils.

It is important to note that although the system changed from reserved seats to special seats, the electoral divisions were still open – based on the first-past-the-post system – to both genders. As demonstrated earlier, the majoritarian model does not lend itself to enhanced female representation.

This section has laid the legal framework for electoral agenda quotas at local and national levels and exposed some underlying systemic challenges; the following section analyses how the quota systems have performed in practice, at both levels.

AN ASSESSMENT OF THE PERFORMANCE OF THE GENDER QUOTA SYSTEM

How the Quota System is Performing at National Level

Lesotho has used the majoritarian electoral system since independence. As a result, the representation of women has been very low. For instance, after the 1965 election, which was held about a year before independence, there were no women in the National Assembly. The situation did not improve in the next election of 1970. Although the 1970 election was aborted (Macartney 1973), and no parliament came into being, research shows that there was still no women's representation. From 1970 to 1993, no legitimate elections were held in Lesotho. When the country returned to electoral politics in 1993, the elections were still held under the majoritarian electoral system. The representation of women improved slightly, standing at around 5%. The next election was held in 1998, still under the majoritarian electoral system. The rate of women's representation in the National Assembly dropped slightly to 3.8%.

After the 1998 elections, major electoral systems were instituted, which resulted in the country changing the electoral system from the full majoritarian system to a mixed system – the MMP model. The first election to be held under the MMP system was in 2002. In terms of the newly adopted system, the seats in the National Assembly were increased from 80 to 120. The 80 constituencies were retained, and an additional 40 seats were allocated through the PR system. The PR seats compensate parties for the shortfall between the proportion of votes obtained and the percentage of the constituency seats won. Due to the proportionality leg of the electoral system, which is reputed to be more conducive to female representation, the rate of female representation in the National Assembly received a significant boost after the 2002 elections, increasing from 3.8% in 1998 to 12.5%. Although the rate improved significantly, it was still woefully low.

After the 2002 elections, and mindful of the minimal impact brought about by the introduction of proportionality to the electoral system, the country introduced further changes to the electoral system with a view to improving the rate of female representation in the National Assembly. For the first time, the country introduced the electoral quota system. As earlier demonstrated, the system was not necessarily intended for equalising representation in the National Assembly. Instead, it was hoped that the system would reach not less than 50-50 representation, at least on the 40 PR seats. The first election held under the electoral gender quota was in 2007. As was expected, the rate of female representation improved significantly to about 25%, but was still short of the minimum 30% threshold.

A factor that negatively affects the representation of women in the National Assembly is that the electoral gender quota law is limited to only 40 PR seats.

Unlike in the local councils, the 40 seats are shared between men and women. Even before they are shared between men and women, the seats in themselves constitute only about 33% of the entire National Assembly and women are guaranteed at most half of the seats, which is 16.5% of the total number. Indeed, we know that the 80 constituency seats are open to both genders, and sometimes women do occupy them. Still, the constituency-based leg of the electoral system is proven not to 'be favourable' for women.

The PR seats serve to compensate parties for the shortfall between the proportion of votes obtained and the percentage of the constituency seats won. Since these are compensatory seats, the more constituency seats a party wins in proportion to the total votes garnered, the fewer the compensatory seats. This usually happens in the large parties. For instance, in the 2012 national elections, out of 48 seats for the Democratic Congress (DC), only 7 (14.5%) were allocated through the PR system. Similarly, out of the 30 seats for the All Basotho Convention (ABC), only 4 (13%) were allocated through the PR system (IPU 2013). The same trend took place in the 2015 elections: 21% and 13% of seats were allocated to the DC and the ABC in that order (IPU 2016). This has led to a situation where men dominate both the constituency and PR seats, leaving women's representation at less than SADC's 30% target.

Though it can be argued that the Lesotho national case is that of a 'rank order rule without a quota outcome' (since the size of the quota or the quota outcome has not been announced), it can be discerned from the arrangement that the proportion of seats reserved for women is very low; the 'zebra list' has therefore failed to enhance gender parity in the legislature. As Schwindt-Bayer (2009, p. 17) and Sojo et al. (2016) pointedly contend, the size of the quota matters because of its ability to boost the presence of women in legislative bodies.

Since the law does not require the first person on the list to be a female, political party's first candidate on the list is the party leader, who invariably is a male. Hence, for smaller parties that send one candidate to parliament, such single candidate is often a male. For instance, in Lesotho's 2015 national elections, four parties, namely the Basutoland Congress Party (BCP), the Lesotho People's Congress (LPC), the Marematlou Freedom Party (MFP) and the National Independence Party (NIP) secured one parliamentary seat and, as has been the practice, they were occupied by the male leaders. This has happened in almost all the election cycles since 2012. This confirms the assertion by Larsrud and Taphorn (2007, p. 10) that the size of the parties affects the proportion of women in the legislature as the male leaders of small parties take up the top slots in the party lists, thereby disadvantaging their female counterparts.

Additionally, the political parties in Lesotho have not adopted quotas for the nomination of candidates to the National Assembly. The few parties that have an

affirmative action provision in their constitutions, namely the DC, the Lesotho Congress for Democracy (LCD) and the Alliance of Democrats (AD), focus on the internal party structures and political posts in government. They are silent on the National Assembly candidacy. The political parties in the country have thus not made any efforts to reinforce the electoral quota system in their constitutions, hence the low representation of women in the legislature. This affirms IDEA's view (2021, p. 71) that a direct relationship exists between countries with high levels of representation of women and the adoption of voluntary quotas by the ruling parties. For instance, South Africa, Namibia, Mozambique, Ethiopia and Cameroon are ranked amongst the top ten African countries with the highest levels of women's representation in parliament, and the ruling parties have adopted voluntary quotas (ibid.).

How the Quota System is Performing at Local Level

The local governance system in Lesotho is in its infancy. The country introduced the system of a fully democratic and elective electoral system only in 2005. Thus far, the country has held only three local government elections – in 2005, 2011 and 2017. All the elections were held under a gender quota system of one form or another. During the inaugural 2005 elections, the system worked in such a way that 30% of the electoral divisions were reserved for women. The outcome of the election surpassed the 30% threshold by far, putting the rate of female representation countrywide at 58%. It is important to note that the system was still 100% majoritarian. The rate of female representation has been boosted by the reservation of 30% of the electoral divisions (constituencies) for exclusive female contestation.

In the run-up to the second election in 2011, the system was changed to make it less intrusive into men's rights, although it was still intended to attain the minimum of 30% representation of women. This time around, the idea of reserving electoral divisions for women was rescinded in favour of a new innovation, which was styled 'special seats for women'. The special seats constitute 30% of the total number of seats in a local council. They are then allocated to political parties proportionally. The change meant that the system at the local level was becoming mixed, combining plurality with proportionality. The voter is now given two ballots – one for the plurality leg of the system and another for the special seats (proportionality). The essence of the system is that special seats are intended to attain the 30% threshold without preventing men from contesting seats. Following the 2011 local government election, the rate dropped from 58% in 2005 to 49%. However, the rate was almost 50% – far above the threshold. The next local government election was held in September 2017. After this election, the rate of female representation continued to plummet, to 40%.

Table 2: Rate of female representation at the local level since 2005 elections

| Local Government Election Year | Rate of female representation (%) |
|--------------------------------|-----------------------------------|
| 2005 | 58 |
| 2011 | 49 |
| 2017 | 40 |

Source: Gender Links 2017

Although the rate of female representation at local level is still above the threshold, unlike the rate at the national level, the steady decline is a worrying factor. Table 2 above indicates that there has been a decline since 2005. This downward spiral continues despite the quotas. Nevertheless, the comforting factor with the local governance system, compared to the one at the national level, is that the rate may not drop below the threshold because of how the system is designed. The local level's quota system is designed to ensure that the rate will not fall below the 30% threshold.

CONCLUSION AND RECOMMENDATIONS

This article has demonstrated that although the system of electoral gender quotas may have its challenges in the broader quest for women's empowerment, it remains the most viable mechanism for accelerating the rate of representation of women in legislative bodies. Lesotho has different systems for electoral gender quotas for national and local levels. The system at the national level is based on the 'zebra lists', and the one at the local level has changed from the reservation of seats to 'special seats for women'. However, Tables 1 and 2 demonstrate that the quota system at the local level is more effective than the one at the national level.

The local government system has been designed so that it has a threshold of 30%, while the one at the national level does not. By creating zebra lists at the national level, it was hoped that at least for the 40 PR seats – which already constitute a mere 33% of the National Assembly seats – there would be 50-50 representation for both genders. But even 50-50 representation on the PR seats is barely attainable because there is no requirement that the first person on the list is a female. Consequently, political parties always put the leader of the party first on the list, and the leaders are invariably men. Indeed, in larger parties, the leader will win a constituency seat and the next person on the list – who is a female – is then first on the list. But the situation where leaders win constituency seats is rare; this happens for only a few political parties. For instance, during the 2017 election, only five leaders won the constituency seats, thereby creating space for

females to appear first on the lists. The situation is rendered even more dire by smaller political parties that often win only single seats. For such parties, those single seats are always for the leaders, who are usually males.

We have three main recommendations for the improvement of the effectiveness of the electoral gender quotas in Lesotho. Having noted the recommendation by the National Reforms Authority (NRA) for a constitutional amendment to increase the PR seats from 40 to 60 in the National Assembly (Kabi 2021), we welcome the move. However, this will only secure 25% of the seats for women as they are still going to share the 60 seats with their male counterparts. Subsequently, the first recommendation is that the system needs to be reviewed to ensure that it has a threshold of at least 30%, with the progressive aim of realising parity.

The second recommendation is that legislation must impose quota systems at the political party level, where the decisions about representation in Parliament or any legislative body are made. This will ensure that the idea of gender parity is inculcated as part of the political culture from that level.

The third recommendation relates to representation in the Senate. This chamber is often overlooked, yet when Parliament is assessed as a whole, it undermines even the small gains that have been made in the lower chamber, the National Assembly. Since the majority of the senators are hereditary chiefs, it is to be expected that males will always constitute the members of the Senate because of the primogeniture rule of succession in Lesotho (*Senate Gabasheane Masupha v Senior Resident Magistrate of the Subordinate Court of Berea*, 2013). Even for the 11 senators appointed by the king, who constitute only about 33% of the Senate, gender considerations during the appointment are not required. It is recommended that the gender quotas be extended to the Senate.

----- REFERENCES -----

- Atske, S, Geiger, AW & Scheller, A 2019, 'The share of women in legislatures around the world is growing, but they are still underrepresented'. Available at <<https://www.pewresearch.org/fact-tank/2019/03/18/the-share-of-women-in-legislatures-around-the-world-is-growing-but-they-are-still-underrepresented>>. [12 September 2021].
- ACE, 2021. *The Electoral Knowledge Network*. [Online] Available at: <https://aceproject.org/ace-en> [Accessed 19 October 2021].
- Arnesen, S & Peters, Y 2018, 'The Legitimacy of Representation: How Descriptive, Formal, and Responsiveness Representation Affect the Acceptability of Political Decisions', *Comparative Political Studies*, vol. 51, no. 7, pp. 868–899.

- Bjarnegård, E & Zetterberg, P 2016, 'Political Parties and Gender Quota Implementation: The Role of Bureaucratized Candidate Selection Procedures', *Comparative Politics*, vol. 48, no. 3, pp. 393-417.
- Broome, LL, Conley, JM & Krawiec, K 2011, 'Does Critical Mass Matter? Views From the Board Room', *Seattle University Law Review*, vol. 34, pp. 1049-1080.
- Carroll, S, Dodson, D & Mandel, R 2001, *The Impact of Women in Public Office*, s.l.: Rutgers, The State University of New Jersey.
- Caul, M 1999, 'Women's Representation in Parliament: The Role of Political Parties', *Party Politics*, vol. 5, no. 1, pp. 79-98.
- Chaney, P 2012, 'Critical Actors vs. Critical Mass: The Substantive Representation of Women in the Scottish Parliament', *British Journal of Politics and International Relations*, vol.14, pp. 441-457.
- Childs, S & Krook, M 2008, 'Critical Mass Theory and Women's Political Representation'. *Political Studies*, vol. 56, pp. 725-736.
- Clayton, A & Zetterberg, P 2018, 'Quota Shocks: Electoral Gender Quotas and Government Spending Priorities Worldwide', *The Journal of Politics*, vol. 80, no. 3, pp. 916-932.
- Clayton, A 2021, 'How Do Electoral Gender Quotas Affect Policy?', *Annual Review of Political Science*, vol. 24, pp. 235-52.
- Dahlerup, D & Freidenvall, L 2005, 'Quotas as a 'fast track' to equal representation for women', *International Feminist Journal of Politics*, vol. 7, no. 1, pp. 26-48.
- Dahlerup, D 1988, 'From Small to Large Minority: Women in Scandinavian Politics', *Scandinavian Political Studies*, pp. 275-298.
- Dahlerup, D 2006, 'The Story of the Theory of Critical Mass', *Politics & Gender*, pp. 511-522.
- Dovi, S 2007, 'Theorizing Women's Representation in the United States', *Politics & Gender*, vol. 3, pp. 297-319.
- El-helou, M 2009, 'Women Quota in Lebanon: A False Promise?', In: M. El-Helou, (ed.) *Gender Quotas and Parliamentary Representation*, [Beirut], The Institute for Women's Studies in the Arab World Lebanese American University, pp. 58-65.
- Elklit, J 2008, 'The 2007 General Elections in Lesotho: Abuse of the MMP System?', *Journal of African Elections*, vol.7, no. 1, pp.10-19.
- Fernández JJ & Valiente, C 2021, 'Gender quotas and public demand for increasing women's representation in politics: an analysis of 28 European countries', *European Political Science Review*, vol 13, pp. 351-370.
- Gender Links 2017, *Women's Representation in Lesotho Govt Recedes* [Online] Available at: <https://genderlinks.org.za/pressreleases/lesotho-womens-representation-new-coalition-government/> [Accessed 20 September 2021].
- Goetz, AM & Hassim, S (eds) 2003, *No shortcuts to power: African women in politics and policy making* (Vol. 3). Zed Books: London.

- Goulding, K 2009, 'Unjustifiable Means to Unjustifiable Ends: Delegitimizing Parliamentary Gender Quotas in Tunisia', In: M. El-Helou, ed. *Gender Quotas and Parliamentary Representation*. [Beirut], The Institute for Women's Studies in the Arab World Lebanese American University, pp. 71-78.
- IDEA 2021, *Women's Political Participation: Africa Barometer 2021*. [Online] Available at: <https://www.idea.int/publications/catalogue/womens-political-participation-africa-barometer-2021> [Accessed 5 September 2021].
- IPU 2013, *Lesotho National Assembly*. [Online] Available at: http://archive.ipu.org/parline-e/reports/arc/2181_12.htm [Accessed 15 August 2021].
- IPU 2016, *Lesotho National Assembly*. [Online] Available at: http://archive.ipu.org/parline-e/reports/arc/2181_15.htm [Accessed 15 August 2021].
- IPU 2021, *Global and regional averages of women in national parliaments*. [Online] Available at: <https://data.ipu.org/women-averages?month=1&year=2021>
- Kabuni, M Agon, D 2021, *Reserved seats in PNG: lessons learnt*. [Online] Available at: <https://devpolicy.org/reserved-seats-in-png-lessons-learnt-20210525-2/> [Accessed 10 September 2021].
- Kalaramadam, S 2018, 'Presence into Participation and Representation: Gender Quotas in Local Governance in India', *Journal of South Asian Development*, vol.13, no.1, pp. 1–23.
- Kethusegile-Juru, B 2004, 'Quota Systems: An Overview of Global Trends Continental Analysis', In: J. Ballington, ed. *The Implementation of Quotas: African Experiences, Quota Report Series*. IDEA, Stockholm, p. 15.
- Krook, ML 2009, *Quotas for Women in Politics: Gender and Candidate Selection Reform Worldwide*, Oxford University Press, New York.
- Kurebwa, J & Ndlovu, S 2017, 'The Critical Mass Theory And Quota Systems Debate', *International Journal of Advanced Research and Publications*, vol.1, no.1, pp. 48-55.
- Larsrud, S & Taphorn, R 2007, *Designing for Equality Best-fit, medium-fit and non-favourable combinations of electoral systems and gender quotas*. [Online] Available at: <https://www.idea.int/publications/catalogue/designing-equality-best-fit-medium-fit-and-non-favourable-combinations> [Accessed 15 September 2021].
- Kabi, P 2021, 'Electoral Constituencies To Be Slashed: NRA', *Lesotho Times* 12 October. [Online] Available at: <https://lestimes.com/electoral-constituencies-to-be-slashed-nra/> [Accessed 20 October 2021].
- Kali, M., 2018. 'Women Empowerment in Lesotho: Reality and/or myth?', *International Journal of Scientific Research and Management*, vol.6, no 03, pp. 52-59.
- Macartney, WJA., 1973, 'The Lesotho General Election of 1970', *Government and Opposition*, vol. 8, no. 4, pp. 473-494.

- Mansbridge, J 1999, 'Should Blacks Represent Blacks and Women Represent Women? A Contingent', *The Journal of Politics*, vol. 61, no.3, pp. 628-657.
- Matlosa, K 2008, 'Electoral System Reform and Implications for Gender Equality', *Journal of African Elections*, vol.7, no.1, pp.95-108.
- McCann, J 2013, *Electoral quotas for women: an international overview*. [Online] Available at: https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/2840598/upload_binary/2840598.pdf;fileType=application/pdf [Accessed 27 August 2021].
- Meena, R 2004, 'The Politics of Quotas in Tanzania', In: J. Ballington, ed. *The Implementation of Quotas: African Experiences*, pp. 82-87, IDEA, Stockholm.
- Nachmias, C, & Nachmias, D 1996, *Research Methods in the Social Sciences*, (5th ed.), Arnold, London.
- Nijzink, L & Piombo, J 2005, 'Parliament and the Electoral System: How Are South Africans Being Represented?', in J Piombo & L Nijzink (eds) *Electoral Politics in South Africa*. Palgrave Macmillan, New York.
- Norris, P & Lovenduski, J 2001, 'Blair's Babes: Critical Mass Theory, Gender, and Legislative Life', *John F. Kennedy School of Government Harvard University Faculty Research Working Papers Series*.
- Norris, P 2006, 'The Impact of Electoral Reform on Women's Representation', *Acta Politica*, vol. 41, pp. 197-213.
- Nyane, H., 2017. 'The Never-Ending Story of Law and the Electoral System in Lesotho' *Journal of Law, Society and Development*, vol.4, no. 1, pp.1-23.
- Pande, R & Ford, D 2011, *Gender Quotas and Female Leadership: A Review*, World Bank, [Washington, DC].
- Phillips, A 1995, *The Politics of Presence*, Oxford University Press, Oxford.
- Ramakhula, T 2019, *In but Out in Lesotho: Women's Representation Dilemma*. [Online] Available at: https://media.africaportal.org/documents/Ramakhula__In_but_out_in_Lesotho.pdf [Accessed 15 August 2021].
- Sacchet, T 2018, 'Why gender quotas don't work in Brazil? The role of the electoral system and political finance', *Colombia Internacional*, vol.95, pp. 25-54.
- Schmidt, GD & Saunders, K 2004, 'Effective Quotas, Relative Party Magnitude and the Success of Female Candidates: Peruvian Municipal Elections in Comparative Perspective', *Comparative Political Studies*, vol. 37, no.6, pp. 704-724.
- Schwindt-Bayer, L 2009, 'Making Quotas Work: The Effect of Gender Quota Laws On the Election of Women', *Legislative Studies Quarterly*, vol. 34, no.1, pp. 5-28.
- Shale, S 2012, 'Transforming women's role in local government in Lesotho through a women's quota', *Journal of African Elections*, vol.11, no. 2.
- Sojo, VE, Wood, RE, Wood, SA & Wheeler, M 2016, 'Reporting requirements, targets, and quotas for women in leadership', *The Leadership Quarterly*, vol 27, pp. 519-536.

- Solyom, E 2020, *Gender Quotas: Towards an Improved Democracy*. [Online] Available at: <https://www.e-ir.info/pdf/85754> [Accessed 10 September 2021].
- Tamale, S 2004, 'Introducing Quotas: Discourse and Legal Reform in Uganda', In: J. Ballington, ed. *The Implementation of Quotas: African Experiences*. IDEA, Stockholm.
- United Nations 2020, *United Nations Global SDG Database*. [Online] Available at: <https://unstats.un.org/sdgs/indicators/database>
- UNWomen 2021, *Facts and figures: Women's leadership and political participation*. [Online] Available at: https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures#_edn14 [Accessed 20 September 2021].
- Viljoen, F & Nsibirwa, M 2006, 'Political Participation of Women in Lesotho: The Case of Molefi Tsepe v The Independent Electoral Commission and Others', *Comparative and International Law Journal of Southern Africa*, vol.39, no. 2.
- Weldon, L 2002, 'Beyond Bodies: Institutional Sources of Representation for Women in Democratic Policymaking', *The Journal of Politics*, pp. 1153-1174.
- Yang, W, Yang, J & Zhitong, G 2019, 'Do Female Board Directors Promote Corporate Social Responsibility? An Empirical Study Based on the Critical Mass Theory', *Responsible Finance and Trade*, vol. 55, pp. 3452-3471.

THE 2020 CHADEMA SPECIAL SEATS DISPUTE IN TANZANIA

*Does the National Electoral Commission Comply with
the Law?*

Victoria Lihiru

Victoria Lihiru is a law lecturer at the Open University of Tanzania

ABSTRACT

This article focuses on the CHADEMA dispute regarding the selection of its 19 women to special parliamentary seats after the completion of the 2020 general elections in Tanzania. It argues that the dispute is caused by the failure of the National Electoral Commission (NEC) to provide political parties with a uniform and transparent modality for the selection of women to special seats against the requirement of Article 81 of the 1977 Constitution. The NEC's failure has led to modalities of implementing women's special seats that are incompatible with the international standards governing 'Temporary Special Measures' (TSM). This has led to conflict, the marginalisation and discrimination of women in special seats, ridicule of the special seats system, and a slow transition of women from special to constituency seats. The article provides suggestions on how the special seats system could be reviewed and repositioned to achieve its intended objectives.

Keywords: temporary special measures; special seats system; elections; women and electoral rights

INTRODUCTION

In 2020 Tanzania held its sixth general elections since the reintroduction of multiparty democracy in 1992, with the ruling party, Chama cha Mapinduzi (CCM), winning all those elections (Tanzania Election Watch 2021). With a low voter turnout of 50.2%, the CCM's presidential candidate, the late President John Pombe Magufuli, won the election by 84%, an increase of 26% compared to the 56% of votes obtained in the 2015 presidential election (Tanzania Election Watch 2021). For the first time, the CCM won a majority of the parliamentary seats by

clinching 256 out of 264 seats (Tanzania Bora Initiative 2021). Winning just 4% of the parliamentary seats, the opposition parties collectively failed to secure sufficient seats to form the official opposition camp in the National Assembly (Tanzania Election Watch 2021). The conduct and the delivery of the 2020 Tanzanian elections attracted contradictory conclusions from observer missions. For example, observers from the East African Community (EAC) and the Southern African Development Community (SADC) deemed the elections to be generally credible, while those from the Electoral Institute for Sustainable Democracy in Africa (EISA) and Tanzania Elections Watch perceived the elections to be marred by voting irregularities, internet interruptions, arrests, and violence by security forces both on the Mainland and in Zanzibar, thus neither free nor fair (Tanzania Election Watch 2021).

Since Tanzania became independent in 1961, men have consistently been the majority of the directly elected members of the National Assembly (Killian 1996). No women were elected from constituencies during the single party elections conducted between 1965 and 1980 (TEMCO 2016). The first woman to win a constituency was in 1985, followed by two more women in 1990 (Killian 1996). This number kept increasing, albeit at a slow pace. Subsequent elections led to eight women winning constituencies (3.4%) in 1995, twelve (5.3%) in 2000 and seventeen (7.3%) in 2005. In more recent elections, 21 (8.7%) women won constituencies in 2010, followed by 25 women (9.4%) in 2015. Sixty years after independence, women in Mainland Tanzania still constitute less than 10% of the directly-elected parliamentarians. After the 2020 elections and subsequent by-elections,¹ women won 26 seats out of 264 seats (9.8%).

The low progression of participation by women in the National Assembly resulted in the introduction of the Special Seats System (SSS) in 1985 (The Constitution of United Republic of Tanzania 1977, Article 66-1(b) & 78). The system was established as part of a global movement for countries to adopt Temporary Special Measures (TSM) to address the systemic challenges that women face when accessing decision-making positions (Killian 1996; Makulilo 2009; Meena et al. 2017). The SSS is constitutionally managed by the National Electoral Commission (NEC).

Before the introduction of the SSS, women constituted 7.5% of the first post-independence Tanzanian Parliament (1962-1965). The number remained below 10% until 1985 (Meena 2009), when the constitutional reform to the 1977 Tanzanian Constitution introduced a parliamentary quota system mandating that

1 There have been two by-elections in Muhamwe and Buhigwe in Kigoma region since the 2020 general election in Tanzania Mainland and one by-election in Zanzibar. In Tanzania Mainland, the by-election was undertaken on 16th May 2021, a woman, Frolence Samizi, won in Muhambwe constituency.

15% of all members of parliament be women.² The influence of the 1995 Beijing Declaration and Platform for Action (United Nations 1996), which inter alia called upon states to take steps to achieve equal representation of men and women in political spaces, occasioned the increase of special seats for women to 20% in 2000 and later to 30% in 2005 (Constitution Article 66-1(b)). Following the government decision, the number of special seats for women was increased to 40% in 2015 (Interview, Director of Elections, National Electoral Commission, May 2021). With the introduction of SSS, the number of women in Tanzania's Parliament increased to 16.73% after the 1995 election, 21.5% after the 2000 general elections, 30.3% after the 2005 elections, and 35.85% after the 2010 general elections. The number increased slightly to 37.2% after the 2015 election and remains at 37.1% after the 2020 general elections (IPU, 2021).

Table 1: Trend of the Number of Women in Parliament 1985-2021

| Year | Women who won in constituencies | Women Special Seats | Total Number of Parliamentarians | Total Percentage of Women in the Parliament |
|------|---------------------------------|---------------------|----------------------------------|---|
| 2020 | 26 | 113 | 393 | 37.1 |
| 2015 | 25 | 113 | 393 | 37.2 |
| 2010 | 26 | 102 | 357 | 35.85 |
| 2005 | 17 | 75 | 307 | 30.03 |
| 2000 | 12 | 48 | 279 | 21.51 |
| 1995 | 8 | 37 | 269 | 16.73 |
| 1990 | 2 | 19 | 242 | 8.68 |
| 1985 | 1 | 22 | 239 | 9.62 |

Source: Parliament of Tanzania; Reports from National Electoral Commission

The SSS has also contributed to a gradual improvement in community perceptions of the role of women as leaders, and in passing progressive policies and laws relating to gender, especially in the areas of marriage, sexual offences, education, labour, land ownership, leadership, elections and political participation. The SSS has also facilitated women's nominations in senior political positions and has inspired many women to consider politics as a career (Lihiru 2019).

2 The proposal was made by the Nyalali Commission – The Presidential Commission on Single Party or Multiparty System in Tanzania 1992 (Volume 1), Dar es Salaam University Press. The Chairman of this Commission was the late Chief Justice, Francis L. Nyalali, and hence the commission is popularly known as the Nyalali Commission. The report was submitted on 17 February 1992.

The merits and challenges facing the implementation of women's special seats in Tanzania are thoroughly documented (Killian 1996; IDEA 2003; Makulilo 2009; Swai et al. 2013; Kairuki; Bjarnegård & Zetterberg 2016). However, this body of literature is from the perspective of political science. Despite its usefulness, such literature does not offer an analysis regarding the compatibility of the SSS's national legal framework with the international and regional temporary special measures' guiding frameworks; areas of convergence and divergence; and the implication of the implementation and success of the SSS in the Tanzania. The status quo leads to an absence of concrete recommendations to the government and NEC on strategies to align the SSS with the international and regional frameworks, as well as the objectives for its establishment. Consequently, this gives room to the emergence of disputes, such as that of *Chama cha Demokrasia na Maendeleo* (CHADEMA), the second-largest political party in Tanzania, as explained below.

Since their inception, the implementation of special seats for women has been tainted with concerns over its rationale, the interests they serve (Makulilo 2009), and the soundness of the mechanisms for obtaining women for special seats (Killian 1996). Thirty-six years since its introduction, concerns exist as to whether the implementation of SSS is on track and if it should continue. After the 2020 general election there was further attention to the SSS with a contestation between the main opposition party CHADEMA, the NEC, and the Speaker of the National Assembly, over the selection of the 19 CHADEMA women candidates for special seats. After the vote-counting exercise for the 2020 general election had been completed, the NEC declared CCM and CHADEMA as the only political parties qualifying to nominate women for special seats. The NEC apportioned 94 and 19 seats to CCM and CHADEMA respectively, in line with parliamentary votes obtained by such parties.³ While CCM moved swiftly with the submission of the list of women for special seats to the NEC, ⁴ CHADEMA boycotted the process of submitting their list of women for special seats. CHADEMA claimed that acceptance of special seats would mean endorsing the manner and the outcome of the 2020 general election, and principally sanctifying what they perceived to be a rigged election. While CHADEMA's national leadership continued to maintain its public stance, a faction of the CHADEMA's women wing, *Baraza la Wanawake Chadema* (BAWACHA), under the leadership of its chairperson, Halima Mdee, together with 18 other women appeared in the Parliament and took an oath before the Speaker of Parliament to become special seats parliamentarians. The CHADEMA central committee's emergency meeting claimed not to have

3 In the 2015 general election, CCM received 66 seats for women special seats while CHADEMA received 37 seats and the CUF received 10 seats.

4 In total CCM have 118 women in the 12th Parliament (24 won constituency seats and 94 women special seats), the largest number since the introduction of multiparty democracy in Tanzania.

submitted names to NEC, selected, or blessed the swearing in of the 19 women. The Speaker of Parliament claimed to have administered the oath to the 19 women based on the official notification of declaration received from the NEC. Similarly, the NEC claimed to have nominated the 19 women from the official letter submitted by CHADEMA on 19 November 2020. CHADEMA accused the 19 women of forging party documents, and subsequently stripped them of leadership positions and expelled them from the party. CHADEMA accorded the 19 women the right to appeal through intra-party appeal mechanisms if they felt aggrieved by the expulsion. The women appealed against the party decision, but months have lapsed without CHADEMA determining the appeal (Interview with one of the 19 women, 2021).

Article 71 (1)(e) 1997 of the 1977 Constitution provides that ‘a Member of Parliament shall cease to be a Member of Parliament and shall vacate his seat in the National Assembly’ if, inter alia, he or she ceases to be a member of the party to which they belonged when elected or appointed to be a Member of Parliament. Precedent suggests that parliamentarians who were expelled from their parties were subsequently removed from the National Assembly with immediate effect, and those who resisted managed to do so with the injunction of the High Court. The Speaker of the National Assembly, Job Ndugai, however, maintains that CHADEMA’s 19 expelled members are still valid MPs and will continue to serve as such. The Speaker cites patriarchy on the side of CHADEMA and that no official letter had been received by the National Assembly from CHADEMA regarding the dismissal of the 19 women.

The CHADEMA special seats saga raises countless questions, calling for in-depth interrogation of the procedure for selecting women for special seats; the efficacy and fairness of political parties’ internal dispute resolution mechanisms; the position and autonomy of women’s branches within political parties; the procedure for the cessation of parliamentary membership; the role of patriarchy; and how power struggles and the use of government machinery affect women’s leadership agenda. This article focuses on discussing the legal framework guiding the selection of women for special seats in Tanzania, its contribution to the emergence of the CHADEMA women special seats dispute, and other related challenges resulted from the implementation of women SSS. In doing so, the article compares the national legal framework governing the nomination of women for special seats in Tanzania and its practice to international and regional frameworks in order to draw similarities and differences, and offer recommendations.

The article uses primary qualitative data collected from the Tanzanian Constitution and election-related legislation to grasp the legal underpinnings governing the operation of SSS in the country. Moreover, international and regional conventions, election data, and other secondary sources are studied

in order to understand the international framework governing the execution of temporary special measures. Key informant interviews and focus group discussions conducted between 2019 and 2021 with the Association of Local Government Authorities (ALAT),⁵ Association of Women in Local Government,⁶ Tanzania Women Parliamentary Group (TWPG),⁷ political parties, and other practitioners, provided insights on practical aspects and challenges related to the implementation of the women's special seats system in Tanzania.

THE INTERNATIONAL STANDARDS FOR IMPLEMENTING SPECIAL SEATS FOR WOMEN

The Special Seats System (SSS) in Tanzania draws its legal roots from Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and Article 9 of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*. Tanzania ratified both CEDAW and the Maputo Protocol in 1986 and 2007 respectively with no reservation. Article 4 of CEDAW states that:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The framing of Article 4 of CEDAW encourages the use of temporary special measures in order to give full effect to Article 7 of the Convention which requires states parties to take appropriate measures to eliminate discrimination against women in political and public life (CEDAW, 1979).

Similarly, Article 9 of the Maputo Protocol states that:

States Parties shall take specific positive action to promote participative governance and the equal participation of women in the political life of their countries through affirmative action, enabling national legislation

5 The Association of Local Government Authorities of Tanzania (ALAT) is the national local government association whose role is promoting and sustaining the goals and ideals of decentralization, available at <http://alat.or.tz/>.

6 Popularly known as *Wanawake wa Serikali za Mitaa* (WASEMI), it is an association of women working in local government councils to advance women issues in local government.

7 A cross-party women's parliamentary caucus, working to advance gender equality in the National Assembly in Tanzania.

and other measures to ensure that: a) women participate without any discrimination in all elections; b) women are represented equally at all levels with men in all electoral processes; and c) women are equal partners with men at all levels of development and implementation of state policies and development programmes.

Articles 4 of CEDAW and 9 of the Maputo Protocol describe criteria for implementing temporary special measures by member states, including the need for the adopted measure to accelerate the realisation of de facto equality between men and women, not to be regarded as discrimination, not to maintain unequal or separate standards, and to be discontinued when the goal of equality of opportunity and treatment has been achieved (CEDAW 2007).

CEDAW expounds the criteria for operating temporary special measures through its General Recommendation No. 25, Article 4, 30th Session, 2004. The recommendation calls on member states to ensure that the legislation providing for temporary special measures gives detailed guidance and justification of measure adopted (*ibid.*). Countries are similarly required to implement plans with clear goals, targets, and steps for women to access such measures in line with respective electoral systems. The recommendation further calls for the institution, implementation, and monitoring of long-term measures for men and women to equally access decision-making positions to accompany the adopted form of temporary special measure. Generally, a country's governing legal framework for temporary special measures must provide answers to questions such as: how would women be nominated to such seats; what would their constituencies be; what would women do on reserved seats; and how would their positions differ from and relate to constituency MPs (UNDP, 2015). Owing to their important role in accessing political decision-making roles, member-states are required to institutionalise clear guidelines for the political parties' nomination of women for any form of the adopted temporary special measure. Successful implementation of any form of temporary special measure, including SSS, is dependent on how a country complies with the established criteria listed above.

COMPATIBILITY OF TANZANIA'S SPECIAL SEATS SYSTEM WITH INTERNATIONAL STANDARDS

In Tanzania, the procedure for implementing the women's special seats system is not centrally established, but can be deduced from Articles 66(b), 67, 78 and 81 of the 1977 Constitution of the United Republic of Tanzania, and Section 86A of the National Election Act.⁸ The legal framework requires not less than 30%

8 Cap 343 R:E 2012.

(currently increased to 40%) of all categories of members of parliament to be designated for women through the SSS. Women are nominated by political parties which contest for election and obtain at least 5% of the total valid votes cast for parliamentary seats (The Constitution of United Republic of Tanzania, Article 78). The qualifying political parties propose and submit the names of eligible women candidates arranged in order of preference to the NEC. The NEC, in accordance with the proportion of votes obtained by each party and the order of preference proposed, then declares such number of women as parliamentarians for women special seats. Finally, the NEC sends a notification declaring the women for special seats to the Speaker of the National Assembly and to the secretary-generals of the respective political parties.

Apart from the content of Articles 66, 67 and 78 of the 1977 Constitution, and section 86A of National Election Act, no further procedure for implementing the women's special seats system, including the selection modality, is provided (Swai et al. 2013). Nevertheless, Article 81 of the 1977 Tanzanian Constitution directs the NEC to make provisions specifying the procedure to be followed by political parties for the purpose of electing and proposing the names of women special seats MPs. Despite this requirement, the NEC has not provided such guidance to political parties on the procedure for selecting women for special seats as required by Article 81 of the 1977 Constitution. The NEC has left the matter to political parties to use their discretion and designate their own procedure to nominate women for special seats (Meena et al. 2017). The NEC only calls, receives, declares, and submits the names of women special seats to the Parliament and replaces them as need be in line with Articles 66, 67 and 78, completely overlooking Article 81.

Equally, in 2020, political parties invoked their internal mechanisms to nominate women for special seats. Most political parties delegated and/or purported to delegate the role of nominating women for special seats to the political parties' women's wings. A faction of the 19-strong BAWACHA women claims to have been more systematic in undertaking the women special seats nomination exercise for the 2020 general election compared to previous elections in 2010 and 2015 (interview with one of the women's special seats parliamentarians in May 2021). The process started from districts to regions and then to national levels, birthing a secretly-kept list of women nominated for special seats waiting final endorsement by the Party. After the NEC declared that CHADEMA had passed the 5% mark and was eligible for 19 parliamentary special seats for women, criteria were set for ranking the nominees. Given the small number of special seats obtained, preference was given to women who had contested and lost in constituencies, and those from the BAWACHA leadership (ibid.). Respondents amongst the 19 women claim that the CHADEMA special seats dispute goes beyond the public statement that the party had boycotted the seats

due to malpractices in the 2020 general election. According to them, the internal dispute started when a faction of CHADEMA national leadership disregarded the list that BAWACHA had worked on for months so as to provide room for new women, and/or women below the 19 cut-off point to fill the positions. They argue that BAWACHA national leadership's unwavering stand in defence of the list fueled the dispute and divided the national leadership into those against and those in support of the BAWACHA move, with the latter facilitating the eventual signing and delivery of the list to the NEC (Interview with a respondent from the disputed 19-CHADEMA women special seats parliamentarians, May 2021). In addition, some of the 19 women view the public stance of CHADEMA's national leadership regarding boycotting special seats as unconstitutional, since the seats are constitutionally established for the benefit of all women whose political party obtains 5% and above of the parliamentary votes. They argue that since the introduction of multi-party elections, CHADEMA has never accepted the election results, but still those who won the seats and the respective number of women special seats were not prohibited from taking the oath and/or undertaking parliamentary roles. Concerns about the composition and fairness of CHADEMA's internal dispute resolution mechanisms were also raised, with the 19 women citing months of no action since lodging their appeal in December 2020. They further argue that the decision to boycott special seats was not inclusive of the views or the interest of the women's wing, citing the party's consistent practice of overlooking and undermining the wing (*ibid.*). On the other hand, a respondent from CHADEMA's national leadership claimed to have communicated its decision to boycott participation in Parliament through special seats early enough, both internally and externally (Interview with Reginald Munisi, CHADEMA's Director of Election Strategy and Organization, 2020). BAWACHA is perceived as a semi-autonomous department which has to conform to the party's stand, regardless of the circumstances. CHADEMA claims not to have simply boycotted the special seats, but also TZS 109 million party subsidy per month and all elections until there is assurance of an independent electoral commission to deliver the elections. The CHADEMA national leadership perceived the special seats dispute as a continuation of the late President Magufuli's plans to weaken the opposition parties (*ibid.* 2020). The respondent blames the state for using its institutions to legitimise the controversial 2020 elections in the eyes of the national and international community. The state is condemned for the interference and disruption of the intra-party special seats nomination process, stealing the election, and for harassing the party since 2016 (*ibid.*). The respondent further accused the 19 women of being greedy, forging party documents, and going against party directives. CHADEMA condemns the presence of 19 women in Parliament, including their reference as the CHADEMA's MPs, since their

dismissal from the party. The respondent further submitted that, over the years, the increase of CHADEMA's constituency and special seats parliamentarians has been significant, with the exception of what they referred to as 'the stolen 2020 elections'. CHADEMA had four MPs in 1995, three from constituencies and one from women special seats. The number increased to five in 2000, with four parliamentarians winning constituencies and one obtained through special seats. In 2005, CHADEMA won five constituency seats and six special seats. In 2015, the party exponentially increased its dominance by winning 35 constituency seats and 37 special seats. Only one female from CHADEMA won a constituency in 2010, a number that increased to six in the 2015 general election and dropped to one after the 2020 general election (Munisi 2020). According to CHADEMA, the 2020 general election swept away the gains accumulated through the past elections. The party won only one constituency seat and is questioning how one seat would translate to 19 special seats.

On the side of the NEC, the respondent submitted that the Commission duly received the letter and list of names for women special seats from CHADEMA, from which the 19 women were declared to be parliamentarians. The declaration form was duly transmitted to the Speaker of the National Parliament who then administered the oath to the 19 women (NEC official, 2021). The respondent admitted oversight of Article 81 of the Constitution, agreeing that common and transparent guidelines are paramount in avoiding similar disputes in future.

ANALYSIS

In the absence of a clear, transparent, and uniform modality for the selection of women to special seats by the political parties, it is difficult to discern who is honest: the 19 women (who argue that the list was duly signed, endorsed, approved, and submitted to the NEC by CHADEMA), CHADEMA national leadership (who vehemently deny submitting a list of women for special seats), and the NEC (which has confirmed having received the official letter and list from CHADEMA). CHADEMA claims that nomination of women to special seats through political parties' own internal mechanisms respects the autonomy of political parties, and is similar to the basic procedure for nominating candidates for constituencies in which intraparty procedure, customs and traditions apply (Munisi 2020). It is however noted that the aspirants nominated by the political parties do not automatically become candidates; they pass another level of scrutiny at NEC level. The election laws require the NEC to have a final check of the nominated candidates in line with legally-established criteria, a procedure that is not applied to special seats. CEDAW (2004) advises that, owing to a specific purpose that the special seats serve, the patriarchal nature of political parties, and

their imperative role in accessing political decision-making roles, a clear procedure must be put in place to guide the political parties' nomination of women to any form of the adopted temporary special measure.

The self-made procedures used for the selection of women special seats by political parties are vaguely known by their members and largely unknown by outsiders. Literature suggests that due to the absence of uniform guidelines from the NEC, political parties have adopted special seats selection procedures that serve the objective of maximising political power rather than promoting the gender equality agenda (Bjarnegård & Zetterberg 2016). Parties' internal special seats nomination and the endorsement stages have been accused of nepotism, favoritism, and corruption – including sexual corruption (Swai et al. 2013). This is evidenced by the fact that, despite the nomination process being undertaken by women's wings, party organs such as the central or executive committee retain the final say on who is on the final list, including the order of preference (Bjarnegård & Zetterberg 2016). Even though Article 78(1) of the 1977 Constitution suggests that the names of women special MPs should be taken to the NEC after the declaration of election results, political parties have been submitting these lists before or after the elections. They also retain the freedom to change the lists and/or order of preference at any time before the NEC declares the names (interview with high-ranking NEC official, June 2021). There is also no transparent mode of submitting the political parties' lists of women for special seats to the NEC. The blurred nomination process of women special seats at party level and subsequent submission of the list at NEC level does little to erase concerns as to whether the names of the 19 women were legitimately or illegitimately obtained and submitted to NEC. None of the explanations from the 19 women themselves, or the NEC, the National Assembly, and/or CHADEMA, could expunge the confusion. The only way this dispute could have been either avoided or rationalised was if the NEC had had a clear, transparent, and uniform mechanism for political parties to nominate women to special seats, and transmit the names to the commission, a responsibility it has under Article 81 of the 1977 Constitution.

Besides the CHADEMA dispute, the absence of uniform NEC guidelines for the selection of women's special seats by political parties has resulted in ways of implementing SSS that are incompatible with both their objectives and international standards governing their operation under Articles 4 of CEDAW and 9 of the Maputo Protocol, as follows:

The absence of common guidelines has led to a situation where there is no room for the public to be involved in the nomination of women for special seats. The disconnection between the women special seats MPs and members of the public has raised concerns about whether party processes bring about authentic women's voices and substantive representation of women's issues to the

Parliament, or whether women are simply used politically to further the interests of their political parties. Accordingly, the public debate on women's special seats is often controversial and demeaning. The fact that special seats give women an advantage over men in circumventing the cultural, financial and political barriers that exist for women in the electoral process, has led to arguments that the seats are not merit-based overlooking its affirmative action purpose. There is also the view that taxpayers' money being used to pay the 113 women with special seats could have been directed to better use (Swai et al. 2013). Lack of connection with voters denies the women special seats electability status, consequently affecting their acceptance by voters, and limiting their willingness to transition from women's special seats to constituencies.

The existence of women's special seats which are not elected by citizens complicates the accountability of these seats. There is no established mechanism to allow women and/or the public to hold women's special seats representatives accountable for their action or lack of action. Since these special seats are nominated by political parties, the constituency for the seats is automatically deemed to be the political parties and the women's wings (Bjarnegård & Zetterberg 2016). Under the CCM, for example, the women's special seats representatives are supposed to submit monthly progress reports to the headquarters of *Umoja wa Wanawake wa Tanzania*, the CCM's national women's organisation, according to an interview with CCM Special Seats MP in 2021. Women's special seats representatives work to embrace the interests of the political wings even when such interests are incompatible with women or general public interests, according to an interview with WASEMI in 2019. Given that the CCM gets the lion's share of the total number of available special seats, women candidates for special seats under the CCM are selected to represent regions, institutions and/or special groups. Because the main opposition political parties such as CHADEMA and the Civic United Front receive a small share of the special seats, the practice of allocating women special seats by regions is inconsistently practised and is still in its infancy. In these political parties, women's special seats representatives are deemed to be working for all Tanzanians across all national issues (Bjarnegård & Zetterberg, 2016). Making women's special seats representatives responsible for large areas such as a region or a nation makes it difficult for these representatives to engage in any meaningful way, demonstrate tangible results, and build the electorate support required to run for a constituency.

The lack of attachment to a geographical area and absence of people-based accountability for women's special seats has attracted financial discrimination against these seats. This is contrary to Articles 1 and 4 of CEDAW and Article 9 of the Maputo Protocol, which require the adopted form of temporary special measure not to further discriminate against women. In Tanzania, members of

parliament elected from the constituency receive a Constituency Development Fund (CDF) of about 40,000,000 TZS per annum for development activities at constituency level. By law they are recognised as members of parliament, but women in the special seats receive no CDF funding due to the presumption that they do not represent constituencies (Constituencies Development Catalyst Fund Act, Act No 16 of 2009). Although women special seats MPs are deemed to represent women's interests across the nation, such interests are not perceived as a constituency worthy of CDF funds to cater for their unique needs. This implies that women special seats representatives are supposed to use their salaries or raise funds to undertake any meaningful development projects in their area. In the CCM, for example, women special seats representatives are supposed to contribute to social service improvement initiatives in their regions from their salaries and upkeep (subsistence and transport) allowance (Interview with CCM special seats MP, April 2021). Similarly, in CHADEMA between 2015 and 2020, more than TZS one million was deducted from the women special seats MPs monthly salary to contribute to party building activities, according to an interview with CHADEMA Special Seats MP (2015-2020) in April 2021. Denying CDF to women special seats MPs is contrary to Article 4 of CEDAW, which requires a temporary special measure not to maintain separate standards among MPs. On the other hand, undertaking projects in constituencies even with their own funding comes with challenges for women special seats MPs. Constituency MPs dislike having women special seats MPs engage in and/or undertake any development activities in their constituencies. These MPs are concerned that women special seats representatives might leverage their constituencies, build themselves politically and take over the constituency in future elections (Interview with Special Seats MP from CCM, in April 2021). Other constituency MPs insist that women special seats MPs ask for permission before visiting and/or undertaking any engagement with the electorate in their constituencies (*ibid.*). This practice widens the gap between these MPs and the electorate and poses serious questions about how special seats MPs are accepted, appreciated by the voters, and transition to constituency seats (Swai et al. 2013).

The absence of guidance from the NEC on the implementation of women's special seats has also led to several practices that marginalise, discriminate against, and limit the full potential of women's special seats representatives against Article 4 of CEDAW. For example, women in special seats do not qualify to become prime minister as only elected members of parliament are eligible for the premier position (Article 51(2) of the Constitution of United Republic of Tanzania). In the local government authorities and councils – one of the main incubation platforms for women's careers in politics – there are guidelines and practices that prohibit special seats councillors to be members of the local governments'

ethics committee (Interview with women councilors from the Association of Local Authorities, Tanzania, May 2019). Even in those committees where special seats women can be members, such as the committees on HIV/AIDS, Social Services, and Planning, women holders of special seats are not allowed to chair such committees. There are also guidelines and practices depriving special seats councillors from becoming mayors, deputy mayors, and chairpersons of districts, municipalities and city councils (ibid.). In some wards, special seats councillors are not allowed to chair ward development committees (WDCs) meetings even when an elected councillor is absent. The ward leaders and members would prefer that a village or street chairperson to act as a WDC chair rather than a special seat councillor (ibid.). Limiting positions and resources that women special seats MPs (and councillors) can hold, access or receive, indicates outright marginalisation and discrimination of the women in such seats, contrary to Article 4 of CEDAW.

Finally, the absence of NEC guidelines on the management of special seats means the absence of long-term plans to complement the special seats system and level the political playing field. Temporary special measures are supposed to be used in the short term and as a catalyst to kick-start access to decision-making processes, while longer-term efforts are laid to create a sustainable, level playing field for women to transition to competitive seats. Article 4 of CEDAW requires the existence of special seats in the country to be temporary in nature, depending on the country's context, and the level of past inequality and discrimination against women. This means that it is possible for a temporary special measure to apply for a long period of time. According to the United Nations *Convention on the Elimination of All Forms of Discrimination against Women* (General Recommendation no. 25, Article 4, paragraph 1 (2004)), countries are supposed to ensure that they do not eradicate the adopted measure prematurely, but such measures should not continue to exist indefinitely.

The projected timeframe in which temporary special measures can exist must be informed by an implementation plan that should contain clear goals, targets, expected outputs and outcomes, and an evaluation plan to trace progress and make the required adjustments along the way. Thirty-six years since special seats were introduced in Tanzania in 1985, the NEC has not in itself and/or through stakeholders come up with its implementation and evaluation framework to track progress and determine for how long these seats should be continued, and when they should be paused and/or replaced by other mechanisms.

The absence of long-term plans is also evident in the absence of term limits for women serving in the special seats. The 1977 Constitution, electoral laws, and the NEC do not provide for a timeframe for an individual woman to serve in special seats. One woman can legally serve on a special seat endlessly, contrary to the intention of the special seats which is to develop the political capacities

of many women who will afterwards transition to compete in constituencies.⁹ The absence of term limits has slowed down the rate at which the special seats system contributes to the realisation of equal representation by men and women in the political decision-making process. For example, since their establishment, special seats have at most facilitated only 9.8% of women to win constituencies (in the 2020 general election). When one woman stays in a special seat for a long time, she blocks both her chance to transition to a constituency seat and the opportunity for other women to obtain a special seat, gain political experience, and later also transition to constituencies. The transition to competitive seats is also affected by the unintended consequences of the special seats system. Working on the assumption that women already have representation through special seats, the political parties are reluctant to field women as candidates. Women with the potential to compete for constituency seats are discouraged with the promise of being given special seats (Meena et al. 2017). This bias is also carried by some of the male candidates; when they vie against female candidates, they tell the voters to refrain from voting for a woman candidate because she is greedy to even consider contesting for competitive seats instead of competing for special seats positions, which are her rightful place (Lihiru, 2019).

The period between 2011 and 2014 witnessed the constitutional reform process which, among other things, proposed the eradication of women's special seats and the introduction of an equality-based representation of men and women in the Parliament under Article 124(4) of the 2014 Proposed Constitution.¹⁰ Although this article is celebrated by many women's rights advocates, it also has many shortcomings. Its applications are restricted to parliamentary level, overlooking other arms of the state and institutions, and does not contain a modality for implementation.¹¹ Also, at present Article 124(4) is vague and therefore prone to manipulation. The referendum for the proposed constitution was indefinitely postponed by the late President of Tanzania, John Pombe Magufuli, who stated on a number of occasions that constitution-making was the least of his priorities (Lihiru 2019). The sixth president, Samia Suluhu Hassan, also hinted that those who need a revival of the constitution review process should be patient. The revival of constitutional reforms in Tanzania should ensure that Article 124(4) of the proposed constitution is reframed and is clear on how women will access electoral and political decision-making roles across the board.

9 Umyy Mwalimu, the current Minister of State in the Vice President's Office (Union and Environment), served in special seats for ten years before she competed through Tanga Urban constituency in 2020.

10 Article 124(4) simply provides that, 'the basis of composition of the Parliament shall be equal representation of female and male parliamentarians.'

11 Article 124 (4) is silent on the modalities for attainment of equal representation but obliges the Parliament, under Article 124 (6), to enact legislation to classify the procedure of implementation of Article 124.

CONCLUSION AND RECOMMENDATIONS

The CHADEMA fracas provided a glimpse of the challenges facing the implementation of the women's special seats system in Tanzania. This special seats system has existed for 36 years without an implementation plan and with no common guidelines for political parties on how to select women for special seats. The status quo has brought about ways of implementing the SSS that have the effect of ridiculing and watering down the good intentions with which these special seats were introduced. The challenges are largely avoidable. The NEC has to move beyond confining its special seats management role from Articles 66 and 78 of the 1977 Constitution and pick up its substantive role under Article 81 of the Constitution.

CEDAW requires member state to ensure that any form of the adopted TSM, together with its action plans, be designed, applied, monitored and evaluated over time within the specific national context and against the objectives and outcomes they intend to attain. CEDAW calls on state parties to ensure that women, civil society in general and political parties in particular have a role in the design, implementation, monitoring, and evaluation of the adopted TSM (CEDAW, 2004). Three-and-a-half decades since the introduction of the special seats system in Tanzania calls for the system to be nationally evaluated to determine the progress, challenges, and what is needed for the seats to yield the desired results. The evaluation should also look at the suitability of the name 'special seats'. CEDAW advises state parties to adhere to the terminology 'temporary special measures' to avoid confusion, live up to the expected objectives and results, and keep actors alert on the temporary nature of the adopted TSM. Further, the evaluation should look at the suitability of the NEC to manage women's special seats.

CEDAW advises that the responsibility for designing, implementing, monitoring, evaluating, and enforcing any form of TSM is to be vested in existing or planned national institutions. These include women's ministries, women's departments within ministries, presidential offices, ombudspersons, tribunals, or other entities of a public or private nature with the requisite mandate. The NEC's massive and complex responsibility to manage the elections has unfortunately not availed it of adequate time and interest to effectively manage the women's special seats system. Thirty-six years since its establishment, no special seats guidelines have been put in place and no evaluation has been conducted to track the progress, challenges, and necessary realignment (CEDAW 1989). After the evaluation process, the NEC together with stakeholders should create a framework for the implementation of the special seats system. The framework should bring home the locally based rationale for women's special seats in line with international instruments such as CEDAW, the Maputo Protocol, and the

Beijing Platform for Action. The locally based rationale for the special seats system should be well articulated, packaged and communicated to the people so that the seats are viewed as a local agenda serving the local purpose of improving the political situation of local women in the country. The framework should contain accountability measures for the relevant actors responsible for implementation of the special seats system (CEDAW, 1979 Article 2). Importantly, the framework must encompass common guidelines for the selection of women's special seats by political parties in line with the requirements in Article 81 of the 1977 Constitution. The common guidelines should provide guidance on term-limits for serving on special seats; the diversity of women selected for special seats; the geographical locations women special seats will represent; citizens' involvement in voting for women's special seats; and the country's long-term plans to level the political playing field for men and women, equally, to participate and win elections. The framework should also portray linkages and relationships between the special seats system and the country's long-term plans to level the political playing field to enable women eventually to contest and win elections. The long-term measures should include review of the constitution, electoral laws and those governing the operation of political parties to allow independent candidates, as per the 2020 directive from the African Court on Human and Peoples Rights (Makulilo 2017); and the adoption of an equality-based first-past-the-post (FPTP) or proportional representation (PR) electoral system.

----- REFERENCES -----

- Bjarnegård, E, & Zetterberg, P 2016, 'Gender Equality Reforms on an Uneven Playing Field: Candidate Selection and Quota Implementation in Electoral Authoritarian Tanzania', *Government and Opposition*, vol. 51, no. 3, pp. 464–486. doi:10.1017/gov.2016.10.
- CEDAW 1989, *General Recommendation No. 9* (eighth session).
- CEDAW 2004, *General Recommendation No. 25 on Article 4* (thirtieth session) Directorate-General for Research. 'Differential Impact of Electoral Systems on Female Political Representation. Working Document. Women's Rights Series'. https://www.europarl.europa.eu/workingpapers/femm/w10/2_en.htm. Accessed 6th January 2021.
- CEDAW 2004, *General Recommendation No. 25 on Article 4 paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*
- CEDAW 2007, *General recommendations of the Committee on the Elimination of Discrimination against Women*. https://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/General_Recommendations_1-25-English.pdf accessed on 5th November 2020.

- IPU 2020, *Women in Parliament: 1995–2020. 25 Years in Review*, IPU, Geneva. <https://www.ipu.org/file/8993/download>. Accessed October 2020.
- Kairuki, A [2020?], *The Role of Women in Politics in Tanzania*. https://www.hss.de/download/publications/AMZ_90_Frauen_05.pdf. Accessed 10th June 2020.
- Killian, B 1996, 'A Policy of Parliamentary "Special Seats" for Women in Tanzania: Its Effectiveness', *Ufahamu: a Journal of African Studies*, Volume 24, Issue 2-3 Available at <https://doi.org/10.5070/F7242-3016666>
- Lihiru, Victoria, 2019. *Participatory constitutional reforms vs. realization of equal representation of men and women in the parliaments: A study of Kenya, Rwanda and Tanzania*. Ph.D Thesis. University of Cape Town. <http://hdl.handle.net/11427/31508>
- Makulilo, AB 2009, 'Whose affirmative action is affirmative?' lessons from Tanzania', *CEU Political Science Journal*. <http://www.thefreelibrary>.
- Makulilo, AB 2017, 'The independent candidate case by the African Court of Human and Peoples' Rights revisited', *International Journal of Human Rights and Constitutional Studies*, Vol. 5, No. 2, pp.130–143.
- Meena, R et al. 2017, 'Women and Political Leadership: Facilitating Factors in Tanzania', *Uongozi Institute Research Report*, Vol. 17 No. 1. https://media.africaportal.org/documents/Women-in-Leadership-17.1_1.pdf. Accessed 13rd June 2020
- Meena R 2009, 'Women participation in positions of power and influence in Tanzania' available at http://www.redet.udsm.ac.tz/documents_storage/2009-8-19-11-34-
- Swai, IL, Anasel, M & Masue, O (2013). 'Achievements and challenges of women special seats arrangement in Tanzania', *Journal of Policy and Leadership*, Vol. 2, pp. 121–135.
- Tanzania Bora Initiative 2020, *Final Election Observation Report for 2020 General Election*.
- Tanzania Election Monitoring Committee 2016, *A Report on the 2015 Election in Tanzania*. Available at http://www.temco.udsm.ac.tz/images/stories/TEMCO_Reports/TEMCO_2015_GENERAL_ELECTIONS_FINAL_REPORT_ENGLISH_VERSION.pdf.
- Tanzania Election Watch 2021, *Not Free, Not Fair: Final Observation Report on the General Elections held in Tanzania on October 28*. Available at <https://tanzaniaelectionswatch.org/>
- Tanzania 2020, Order 21, *Standing Orders for the National Assembly of Tanzania*, Government Printer, Dar es Salaam
- Tanzania 1977, *Constitution of United Republic of Tanzania*, Dar es Salaam.
- United Nations 1996, *Report of the fourth world conference on women in Beijing, China*, United Nations, New York. available at <http://www.un.org/womenwatch/daw/beijing/platform/declar.htm>. Accessed 13rd November 2019.
- United Nations 2004, *Convention on the Elimination of All Forms of Discrimination against Women*, [United Nations, New York].

PARTY NOMINEE OR INDEPENDENT CANDIDATE?

Examining Electoral Reforms and the Use of Digital Technologies for Voter Participation in South Africa

Limukani Mathe

Limukani Mathe is a postdoctoral research fellow and lecturer in the Department of Media and Communication, University of Johannesburg

ABSTRACT

This article discusses electoral reforms and the use of digital technologies for voter participation in South Africa. The study employed focus group discussions and in-depth interviews through semi-structured questions to engage with voters and politicians. Informed by theories on politics and technology, the article notes that the current electoral system has advantages and disadvantages, though it can be enhanced by the inclusion of a mixed proportional or constituency-based electoral system whereby voters elect political party candidates or independent candidates to represent their constituencies. The article argues that digital technologies alone cannot enhance voter participation without electoral policies that promote voter participation in the candidate selection processes for provincial and national elections. The article further highlights the fact that the use of digital technologies and a mixed electoral system are desirable for maximum citizen participation in national and provincial elections. However, some political parties enjoying dominance in the multi-party democracy might perceive reform as unfavourable. The article concludes that consensus and political will are fundamental to harness all progressive electoral reforms and digital tools for sustainable democracy.

Keywords: proportional representation (PR), mixed electoral system, voter participation, independent candidates, multi-party democracy, digital technologies

INTRODUCTION

This article joins the ongoing debate on electoral policy reforms and voter participation in South Africa. In 2020, the New Nation Movement (NNM)

challenged the Constitutional Court of South Africa to review Electoral Act 73 of 1998 which allows only political parties, not independent candidates, to contest for elections. The current Electoral Act permits political parties to contest for elections at provincial and national level and states that a person ceases to be a member of the National Assembly if he or she loses party membership. In response to the court challenge by the NNM, in June 2020 the Constitutional Court declared the Electoral Act unconstitutional and passed judgement that Parliament should amend the Act to allow independent candidates run for provincial and national elections. The Constitutional Court, therefore, gave Parliament a two-year period to amend the Electoral Act and grant individuals the right to contest as independent candidates. William Gumede (2020b) asserts that the decision by the Constitutional Court paves the way for larger policy changes, directly or indirectly, to the country's electoral system. This may bring back the accountability currently lacking in South Africa's elective system.

Party identification had been viewed as stabilising voting patterns for the individual and the party system (Dalton 2014, p. 194); but scholars argue that the 2019 general elections reflected a loss of citizen trust in political institutions (Gumede 2020b; Schulz-Herzenberg 2019). Schulz-Herzenberg (2019, p. 462) argues that there has been a decline of partisanship in South Africa in the years prior to the 2019 general elections, reflecting that party 'identification had begun to respond to more immediate environmental factors'. Thus, there has been a rise of citizen displeasure with unresponsive and unaccountable democratic institutions and even the electoral system itself. This study follows up on the current debate by shining a light on the electoral reforms and use of technology to enhance voter participation, accountability and responsibility of democratic institutions in South Africa. The study analyses the electoral reforms and digital technologies suggested by political analysts and other politicians, and whether they can improve democracy in South Africa.

SOUTH AFRICA'S ELECTORAL SYSTEM

Since 1994, scholars have been debating the stability of multi-party competition in South Africa, noting the imbalanced partisan competition, racial cleavages and dominance of the ruling party African National Congress (ANC) (Southall 1998; Friedman 1999; Mattes & Gyimah-Boadi 2005). In 1993, the interim constitution proposed a system of proportional representation (PR) whereby a political party (not candidates) gains a number of seats in proportion to the number of votes it receives. By proposing PR, the interim constitution of 1993 aimed at multiparty politics with many political parties participating in the election system (Friedman 1999). The 1993 proportional representation of the interim constitution was meant

to promote a governmental of national unity at both provincial and national level for a period of five years, whereby any party with five seats would be considered in the power-sharing bloc, those securing 5% of national vote would get a cabinet position and a party with 20% of the national vote would participate in nominating the country's deputy president (Gumede 2020b).

The interim constitution of 1993 was abandoned in 1996, prior to the 1999 elections which used the national list system of proportional representation, omitting the power-sharing agreement of the 1993 Constitution. The national list system of proportional representation has no fixed proportion of the total number of votes or threshold required for parties to gain representation in national or provincial legislatures (EISA 2019). Thus, the population figures for each of South Africa's nine provinces determine the number of representatives per multi-member constituency. Regional or provincial representatives elected proportionally from each province occupy 50% (200) of the seats in the National Assembly (Gumede 2020b). The other 50% (200) of the provincial representatives (national list seats) are for overall proportionality.

In 1996, democratic South Africa adopted Section 4(1) of the Act (No. 108 of 1996) which states that the National Assembly should have not less than 350 members or more than 400 members population size of each province. The 1996 Constitution states that it is the responsibility of Parliament to amend the Electoral Act. Gumede (2020b) argues that though proportional representation is emphasised, the current constitution is unclear about the kind of proportionality because both national and provincial elections have a closed party-list electoral system. This is the current argument about South Africa's electoral system, that parties choose candidates without voters' input. Voters simply vote into power the party which consequently chooses candidates to occupy the seats. This is viewed as closed party-list system because candidates are drawn from the party's compiled list. Gumede (2005) argues that 'parties often foist their selected candidates on to constituencies where the residents do not know them, and they do not know the residents'. Often candidates are selected based on their loyalty to the party and leader, rather than on competence or talent and this undermines effective democracy by overlooking factors such as competitiveness, equality, responsiveness, and accountability (Lipset 1983; Horowitz 1985; Dahl 1989).

At local government level, however, South Africa uses a mixed electoral system whereby half the councillors are elected at ward level through local or constituency representation, while the other half comes from the closed-party list proportional representation (PR) system. The party still controls who should be on the list of candidates, for example in 2016 ANC released the names of their mayoral candidates after the elections, and the electorate had no idea who they were electing as city mayors (Gumede 2020b).

The advantage of the PR system is that it is considered an effective and productive reduction of parties with large majorities, enabling the inclusivity of all political parties regardless of their numbers (Pukelsheim 2014). This inclusion of many political parties does promote political diversity and representation, as every vote counts. The PR system has been viewed as fairer because it also uses the largest-remainder method whereby surplus seats are apportioned according to the number of votes. From 1993, during the transitional period of anti-apartheid movements to the non-racial, democratic elections on 27 April 1994 (Booyesen & Masterson 2009), the PR system was instrumental in discouraging political conflict or violence. Voters are therefore familiar with a PR system enabling even minority parties to secure seats (EISA 2019). Voters' political choice is guaranteed through a diversity of political parties reflecting a demographic and ethnicity diversity. In a nutshell the PR system is viewed as easier to run where all votes count and are equal (Pukelsheim, 2014).

The disadvantage of the current South African electoral system is that it has not been able to bring about accountability regardless of its proportional representation of political parties. As a result, there have been 'higher abstentions, individual level vote shifts, vote splitting, and later-than-usual vote decisions' as evidence of a decline in partisan loyalties (Schulz-Herzenberg 2019, p. 463). Schulz-Herzenberg (ibid.) goes on to say that 'the overall effect of weakening partisanship increased the fluidity of voting behaviour, and in turn, increased the unpredictability of the 2019 electoral outcomes'. The other drawback of the current electoral system is that the closed party list system has been viewed as alienating voter participation. Since the party selects its own candidates, this is therefore at the party's discretion rather than that of the voter. Gumede (2020b) views the closed party list as undermining participatory democracy. The participation of voters as citizens is limited only to party selection and does not include candidate selection. Voters are also not involved in selecting the internal candidates or the closed party list, hence are also limited in selecting a presidential candidate. They only vote for a presidential candidate enlisted by political parties, and parties are responsible for the candidate selection, and can even enlist corrupt candidates (Gumede 2020b).

In other words, the party leaders are responsible for electing Members of Parliament (MPs), hence promoting party allegiance with less public accountability. South Africa has witnessed voter dissatisfaction after elections, evidenced by street protests and violence. Thus the 'the erosion of party ties has obvious and predictable effects on electoral behaviour' (Dalton 2014, p. 197). Large number of voters, including young people, have taken to protesting on social media and some have stayed away from political participation, resulting in an increasingly low voter turnout (EISA 2019). Also, there has been a rise in extra

parliamentary political activities based on racial conflicts and class struggles (Gumede 2015). This study therefore puts into perspective the requisite electoral reforms and other technological preferences needed to boost political participation and voter confidence in the electoral system.

Proposed Electoral Reforms and Digital Technologies for Voter Participation

Electoral reforms or the application of digital technologies should bring about solutions where challenges have been experienced in previous elections. Challenges in South Africa's previous elections range from the facilitation of the election process at polling stations, the quality of the electoral infrastructure, training or education of election officials, logistics of delivering ballot boxes or other election material, and the challenges of the current electoral system itself (EISA 2019).

Firstly, the electoral system, which is subject to more parliamentary deliberation and the amendment of the Electoral Act, is found to exclude citizens from participating in national and provincial elections. Thus, political analysts advocate for voter involvement in decision-making such as the direct nomination of candidates rather than a closed party list. Gumede (2020b) mentions that the recall of incompetent party representatives must be made by not only by the parties but also by the voters who elected the representative; and there must be the means for voters to determine their own development and participation in politics beyond formal national and provincial elections. The amendment of the electoral system must also allow voters to elect independent or non-partisan candidates to cabinet, and facilitate an internal democracy inclusive of all races and demographics, with religious and ethnic diversity (Gumede 2020b). Gumede (2020b) calls for an innovative electoral process whereby voters will participate with ease and could even express themselves if unhappy with all the political parties contesting. He opines that the ballot box must have an extra ticking box where voters would be able to indicate if they were unhappy with all the parties contesting and thus cannot vote, rather than have a silent, low voter turnout.

Secondly, it involves the election process, the voting and counting of votes. The national population has expanded due to the increase of youthful voters, and they form a significant proportion of the electorate that implicates South Africa's aggregate turnout rates (Schulz-Herzenberg 2019; Seekings 2014). EISA's election observer mission in 2014 also highlighted a 95% increase of registered voters, and they therefore recommended that the IEC should consider increasing the number of polling stations to meet the increasing number of registered voters per each election cycle (EISA 2014). In the 2014 elections, the Constitutional Court ended up passing the judgement that IEC voter addresses must be recorded on

the voters' roll to avoid bussing voters from one municipality to another. Reports from election observer teams highlighted several challenges, such as the bussing of voters into other municipalities, the late provision by the Independent Electoral Commission (IEC) of the voters' roll, and election-related violence (EISA 2014). For instance, the EISA observer mission in the 2014 elections witnessed the late delivery of voting material experienced at some polling stations, and election violence in parts of KwaZulu-Natal (EISA 2019).

In 2019, the EISA report showed that some polling substations used for national and provincial elections had long, slow-moving queues and the zip-zip machines malfunctioned, resulting in election officials opting for the manual, hard copy of the voters' roll. The counting of special votes was also problematic where election material was found not sealed nor arranged properly, for example in Dihlabeng Maluti Hoogland School, thus party agents became involved by reminding officials to count the votes. The other challenge observed by the EISA EOM was that vote counting was lengthy, with allegations of multiple voting where the indelible ink was easily removed by voters. To mitigate alleged double voting, the EISA report (2019, p.11) recommended 'a harmonised digital voter register to ensure that the zip-zip machines can be used to track persons who have already cast their ballot and serve the purpose of a double check alongside the hard copy registers'. The report also suggested proper planning of sub-stations to manage the number of voters as well as vote counting.

This study therefore considers the perspectives of political analysts, as demonstrated by the literature, in relation to the views of voters and politicians on electoral reforms and the use of digital technologies for voter participation.

THEORETICAL PERSPECTIVE

Political Participation and Digital Technologies

Theorising democratic participation using electoral policies or digital technologies has been difficult, especially in Africa where there are specific political contexts. Some studies show that digital technologies can enhance democracy through fair media coverage for all political parties, equal access to digital tools (such as social networking sites) and reliable tools for voting and tabulating votes, on the premise that the contextual socio-political factors are conducive for the success of such technologies (Mathe 2020a; Chiumbu 2015; Mathe 2021). The technological determinism paradigm acknowledges a relationship between politics and technology or innovation, stating that technological innovations can promote democracy (Ellul 1990), although the 'properties of certain kinds of technologies are intrinsically linked to particular institutionalised patterns of power and

authority' (Winner 1986). Thus, those with access to the democratic spaces of technology are in a better position to determine their political participation and the outcome of democratic processes. Several scholars have written on the diverse ways in which the social media, web 2.0 technologies, electronic voting and similar have intensified political participation (Mathe 2020b; Mathe 2021). The internet, in the form of social media and other democratic spaces, has enhanced the interaction of political players and voters whereby voters' decision-making is influenced (Mathe 2020b).

Through social media citizens enjoy freedom of assembly and participation as they debate issues of national interest (Mathe & Caldwell 2017). Government departments in South Africa have also progressed in terms of public communication through social media pages where they update and engage with the citizenry. Information technologies (IT) as democratic tools can dislodge political and social barriers through citizen online connection and civic engagement, generating an informed citizenry (Kedzie 1997). Mathe (2020b) argues that technologies, if utilised appropriately, can facilitate democratic progress; and Chiumbu (2015, pp. 9–10) notes that media technologies enhance political participation. Since the late 1990s and early 2000s, digital technologies in Africa have been able to democratise some political spheres. Dhawraj (2013) notes that South Africa made use of social media in 2009 and 2014 and this in turn influenced the national elections result. Social movement activists utilised social media spaces for mobilisation and protest.

Citizen mobilisation and protest have been happening through online spaces; however, Mutsvairo and Karam (2018) argue that social media has not been effective in countries ruled by despotic governments. Some governments 'do not tolerate any dissension within the public sphere, whether it is in the cybersphere, the media sphere or the physical realm, in terms of protesting' (Mutsvairo & Karam 2018, p. 9). Mathe (2021) has also shown that some governments avoid implementing electoral policies which threaten their dominance.

On the other hand, some governments have passed electoral laws that make it difficult to enhance democracy. Scholars have argued that technology cannot be used as panacea but as a tool for democratic progress (Mathe 2020b). Proponents of the social construction of technology base this on the perspective that technology cannot override electoral problems on the ground or undo societal problems without appropriate policies or human effort for change. Scholars like Robert Dahl (1989, p. 339) have written that technology is malleable and can be utilised for bad or good; while Castells (2004) argues that technology alone cannot guarantee a change of democratic processes or political institutions. Without a supportive mechanism for democratic change or positive human factors, technologies can erode social capital (Putnam 2000; Joerges 1999). Thus, social actions can

determine the importance of technology (Hoff 2000) because it is 'susceptible to modification by its social practice, thereby leading to a whole range of potential social outcomes' (Castells 2001, p. 5). For instance, in Zimbabwe the internet has been littered with fake news or propaganda and the state has had considerable control of the media (Mathe 2020a).

The study therefore examines the utilisation of digital technologies for voter participation in relation to electoral reforms as a social practice needed for democratic transition.

METHODOLOGY

This study employs a qualitative research method through a semi-structured interview guide (see Appendix) to engage with several voters and politicians in South Africa. The collection of data was carried out between 1 February 2021 and 30 July 2021. Three focus group discussions were carried out telephonically through *WhatsApp* groups due to coronavirus pandemic lockdowns. Purposively, the researcher made use of convenient key participants who could easily introduce additional people to participate in a *WhatsApp group* discussion. The three groups formed had participant numbers ranging from 12 to 14 for each group (with more males than females), mostly from the Eastern Cape, KwaZulu-Natal and Gauteng. The age of participants ranged from 27 to 40 years, with the largest number from the urban areas of Gauteng and KwaZulu-Natal while a few were from the peri-urban areas of the Eastern Cape. Although voters were not from all provinces, information collected does reflect voters' perspectives as citizens of South Africa from urban or poor peri-urban areas. Their perspectives cannot be generalised.

Politicians from several political parties, namely the ANC, the United Democratic Movement (UDM), One South Africa Movement, the Democratic Alliance (DA) and the Economic Freedom Fighters (EFF), participated in this study. While some participants would not disclose their party affiliations, the study focus was aimed at perspectives on the electoral reforms and the use of digital technologies for voter participation, rather than establishing party affiliations. Since a balanced perspective was needed, participants from major political parties were essential for the validity and reliability of the research findings. In-depth interviews with participants were carried out telephonically, while some preferred answering through emails. Altogether 19 politicians participated in this study.

The perspectives in the study reflect concerns from voters, political parties and politicians in South Africa. Since some would not allow their identity to be disclosed, the study generally concealed identities and only displayed the identities of few politicians, with their consent. Some voters responded in their local languages which had to be translated into English. Data transcribed was coded into thematic categories for analysis through the Nvivo 11 research tool.

This article does not reflect all perspectives collected from the participants but focuses on comments that answer the objectives of the study.

FINDINGS

The findings of the study reflect voter and politicians' perspectives. Themes extracted were voter apathy, candidate nomination and the recall of public representatives, party system, affiliation and independent candidates, digital voter registration and voting, voter education, Election Management Body (IEC) and the challenges involved in ensuring voter turnout.

Voter Apathy

Many voters listed apathy as the primary cause for low voter turnout during elections. Several voters noted that politics has not offered any solutions, especially for black livelihoods, hence some voters distance themselves from voting activities. Schulz-Herzenberg (2019, p. 463) also suggests that a lack of accountability has caused 'higher abstentions, individual level vote shifts, vote splitting, and later-than-usual vote decisions'. A participant noted that with the rise of corruption and unemployment many voters, especially the youth, have lost faith in the government and in the ruling party. The EISA report (2019) indicates that a large number of voters, including the youth, have taken to protesting on social media, while some abstain from voting, resulting in a low voter turnout. Another participant added that 'the reason for the low numbers of voters is because people no longer have an interest and loyalty in our political parties as they are no longer serving the interest of the citizens but are just power hungry'.

Some voters believed that although technology can be included to facilitate the electoral processes, it cannot undo the lack of interest or voter apathy. Thus, the political problem is the lack of accountability and responsibility that need to be dealt with until the public regains trust in political institutions. Social constructivists have argued in the same vein, that technology cannot override electoral or political problems. In this regard, some participants noted that there must be an amendment of the current electoral system to promote political accountability and responsibility. Comments from voters include the following:

I think the parties, or the ruling party, is not fulfilling their promises as we can see lot of corruption happening.

We have an ethical political leadership crisis in this country. We need a new paradigm, the system is so corrupted to the extent that it needs a complete overhaul.

I do not believe that the voter turnout reduced because of Ramaphosa, people just lost faith in politics and if that was the case, they would have opted for other candidates in various political parties that we have.

When asked what difference an extra space on the ballot paper would make for voters to turn out and register their protest, one voter suggested that a pre-election survey would give a fair and unbiased understanding of what causes people not to participate in voting. Some politicians feared that adding an extra tick space on the ballot for a protest vote could be manipulated by political elements, noting that it would need extra voter education effort to ensure that there were no spoilt papers or vote swapping.

Candidate Nomination and Recall of Public Representatives

Voters suggested that candidate nomination should not be limited to party members only. A voter noted that it is quite easy to identify errors, but the solution is to enfranchise voters so that they participate in candidate selection. One voter complained that a councillor who was imposed by the party on their ward does not even reside in that ward. Scholars debate the fact that candidates are often selected on the basis of their loyalty to the party rather than their competence, thereby undermining the democratic qualities of equality, competition, responsiveness and accountability. An EFF affiliate confirmed that they as party members select a candidate at local level, who then proves his or her competence in the party up to national level. Some of the comments from the participants are:

I think it is good that voters must vote for the candidates and there must a basic criterion, like post matric qualification, for being a candidate, some of the leaders do not want to quit and they kill for power.

I believe voting for political parties by people should be given the same right when it comes to choosing the candidates inside the political parties, as we all know once a political party wins elections, it is up to the internal people of the party to choose who takes over without the involvement of the public, just like how we vote for the political parties, the general public should also vote on who becomes president as well as ministers.

The comment above proves Gumede's (2020b) contention that the cabinet should also reflect a non-partisan inclusivity of various political demographics.

An ANC affiliate highlighted the fact that the ruling party has passed new guidelines at municipal level allowing communities to elect their own candidate. When probed about the fact that a mixed electoral system has existed at local level, the participant argued that ‘the process of involvement of voters to select a party candidate was not popular up until now, meaning it is a first-hand experience for most of the voters to participate in choosing their own candidates’. Another participant argued that since voters and general party members are still excluded from selecting candidates at national and provincial level, they can therefore ‘use persuasion in the public discourse through various platforms to try and indicate which candidates they would want on those lists. Sometimes it might not really be an issue of the public indicating candidate preferences but the type of a leader(s) that must emerge from those party lists’. Also, ‘unanimous condemnation of corruption, bribes or use of money to influence members of political parties when electing leaders might help shape discourses within the various political party ranks in as far as condemnation of corruption and other unwanted practices are concerned’.

Voters also noted that the party list is indeed a problem, making it difficult for the citizens to hold elected people accountable. An ANC-affiliated politician argued that political party members must be encouraged to participate through a fair process which promotes transparency and accountability. The president of the UDM, Bantu Holomisa, contended that:

Intraparty democracy is not open to the public unless they are members of a particular political party. Fortunately, the Constitution declares it a right for each South African older than 18 to belong to a political party if they so choose. Therefore, if voters wish to be part of selecting candidates and prioritising parties’ candidates lists, it is their right to become members of the political parties of their choice and participate in those parties’ candidate selection and list processes.

Maimane of the One South Africa movement noted that if political parties do not want to involve the public in candidate selection, they should at least be transparent about letting the public know who their constituency representatives are. He further said that a closed party list is undemocratic because the voters and party members do not know who they are voting for. Not all party members, who select party candidates, should be given the right to elect party candidates even at provincial and national level. It is noteworthy that there is therefore a need to amend the Electoral Act for the purpose of transparency and voter participation.

Regarding the recall of incompetent or corrupt public representatives, one participant highlighted that parties should consider reducing the two-thirds

majority required to recall an incompetent public representative to a one-third majority; while another hinted that the recall of public representatives by voters after elections can be abused if the threshold is low: 'it must be high and be for highly incompetent and corrupt people'. Others believed that voters or communities must be empowered to recall incompetent public representatives.

The Party System, Affiliation and Independent Candidates

Voters noted that the multi-party system has been in place since 1993 and its amendment by Parliament will also require voter education, as EISA (2019) has shown that voters are familiar with proportional representation. A participant pointed out that voting is heavily influenced by political affiliation in the sense that voters do not focus on electing a suitable candidate to represent their communities; hence the elected candidates who fail to represent people's needs. One voter noted that the problem of the electoral system can be traced back to the historical background whereby the multi-system was made not for voters but for parties and politicians. Booysen and Masterson (2009) add to this argument that the PR system was primarily designed to discourage political conflict during the transitional period, hence some voters feel the system had no intention of ensuring complete voter participation but supported a coalition of political parties. A participant went on to say that 'voting is a right that ought to be protected and preserved at all times regardless of the method, our hard-earned democracy never guaranteed a smooth operation of all facets of governance'.

Moreover, some voters believed that political parties will still be dominant even with the inclusion of independent candidates at national and provincial level. Given the dominant party system, voters noted that changes should begin within political parties because candidates or public representatives have to abide by party policy. A participant opined that parties finance their campaigns and offer support, making it difficult for independent candidates without party support as they do not benefit from being in a party where every vote counts through the proportional representation (PR) system (Pukelsheim 2014). Another voter added that 'supporting political parties is like supporting football clubs, no matter how imperfect the club is, one will keep on supporting it'. One noted: 'Remember political parties want numbers, that is the most important thing, numbers. If they came with mechanisms to make civilians have a say in the nomination of their candidates, it would be a contradiction of some sort, bear in mind that parties want to convince ordinary voters to buy, believe and trust their manifestos.'

Gumede (2020b) has argued that this drawback of the party system alienates voters. Some political parties, the ANC in particular, have recently passed new guidelines at municipal level by empowering communities to select candidates.

However, this may not sound new because a mixed electoral system has always been used at local government level whereby half the councillors are elected by ward and half imposed by party from a closed list (Gumede 2020b). Voters hinted that independent candidates at local government level have been overshadowed by political parties and there has been lack of information to support them. Some voters agreed that supporting independent candidates at local to national level will challenge party dominance.

Mmusi Maimane also added that there has been a lack of mechanisms to support independent candidates even at local government level, and that an information gap has been a problem. The Electoral Act does allow independent candidates to participate at local government level but there is not much information regarding the success of independent candidates' campaigns because of traditional party dominance. Maimane noted that there should be an association to support, train and fund independent candidates elected by communities. He argued that communities must be allowed to elect a candidate of their choice. One voter confirmed that indeed, knowing a candidate may boost voter turnout because voters will put their trust in independent candidates they know, unless or until they too betray the voters. The voter commented that 'political parties impose corrupt leaders with next to zero academic credentials of proven track record'. Maimane further argued that if an independent candidate is found to be corrupt, communities would recall her or him, unlike in a political party because some parties are captured (in the sense of being corrupt). Holomisa added that choosing a specific person as a candidate is not yet accommodated at national and provincial elections where proportional representation is used. However, the UDM has held the view that South Africa should consider a mixed system at these levels, even to the point where the people may elect their own president, instead of that person being foisted on them by the ruling party.

Voter Education

Participants highlighted the fact that voter education is essential if there is a need to boost voter participation and weaken political party dominance. Voters argued that most voters in the rural areas do not know that they have the power to change national office bearers. They opined that the ruling party, the ANC, would not promote voter education because illiterate voters benefit them as a traditional party. Adrian Roos of the DA also mentioned that the electoral task team of January 2003 did consider the merits of an open-list system over a closed-list system, but the majority chose to recommend a closed-list system due to practical constraints, particularly the literacy rate in South Africa. Another interviewee had the opinion that politicians take advantage of the fact that

voters do not know about the processes of electing representative candidates at community or local level.

One participant noted that the IEC and other interested groups should utilise user-friendly applications such as *WhatsApp* that require less data bundles to ensure that everyone, regardless of social class and geographical location, is able to participate. It was further noted that social media networking sites, or any other messaging compatible with all mobile phones (not only smartphones), can be used to educate voters. It was also noted that the ultimate objective should be to ensure that citizens' right to vote is not infringed by the digital system. This means that in-depth campaigns and various educational advocacies should be widely conducted to ensure that all citizens are familiar with the electoral systems. Participants pointed that 'It is no longer a question of "if" electoral reform will happen, but "when" it will happen because the Constitutional Court declared it unconstitutional, therefore, readiness and preparedness is key'.

Digital Voter Registration and Voting

When asked if low voter turnout can be resolved by implementing electronic voting, some voters believed that voter apathy has far-reaching socio-economic and political challenges that will not be amended only by digital voter registration and voting. It was noted that an efficient political system, enhanced by all possible means of voting, can enhance democracy, because political leadership in South Africa lacks accountability and transparency. As demonstrated in the literature, scholars argue that technology alone cannot solve societal problems. There is therefore a need for electoral reform accompanied by digital technologies for easy voter participation. However, some voters noted that South Africa is still largely rural and thus faces challenges with internet access. A participant commented that besides challenges with internet access in rural areas, electronic voting may yield better voter involvement if introduced correctly in a manner in which voters take ownership and entitlement of their voting rights, compared to the on-site ballot poll.

Some of the voters added that online voting can be a huge change for voters, but still insisted that not everyone is sufficiently literate or has access to ICTs, which means that voter training and funding for training will be needed. Another view was that politicians are able to manipulate everything in their power; hence if elections are to be electronic, they will need a security system to avoid hacking. Mathe (2020b) also reflected on this challenge in the context of Zimbabwe; the country is largely rural, and few have internet access, though he noted that some governments may not want to implement electoral policies that threaten their dominance. It was noteworthy that the online-based voting system might outdo

the challenge of long queues. Another voter argued that electronic voting should be open to those with access to ICTs, while those without ICT access should vote manually. Further comments are as follows:

[The] majority of people do most of their things on smartphones or computers, if we had a system that is online, for example, uses your identity with facial recognition and then after[wards] gives you a list of parties to vote for, I believe we would have a higher turnaround of voters if we had an online voting system.

Government should subsidise data and allow access like in social media. Design a special application that could be downloaded by voters but have strong security features against fraud.

Most participants viewed electronic voting as progressive and likely to increase voter turn-out, especially at a time when the COVID-19 pandemic is prevalent; while others focussed more on the challenges of implementation.

It was noted that the IEC has already implemented an online voter registration for the 2021 local government elections, stating that the interface is user-friendly although there is a problem with ID submission. Participants highlighted the fact that the system has a good verification system which requires the user's cell number and OTP. Hence the argument was that those able to use online registration or voting should be allowed to do so, while those without could remain manual. In 2019, the EISA (2019) report suggested a harmonised digital voter register to assist zip-zip machines track those persons who have already voted, in order to curb alleged double voting. A participant highlighted that there has been a manipulation of election results through the existing technology over the years, such as the uploading of results through result-slips from municipal offices to an online results system. They say the system is ostensibly audited and reflected countless errors slipping through in critical areas over the years. The argument was that voting systems, whether they are manual or electronic, remain vulnerable to humans wanting to manipulate the outcome in favour of a certain party. Thus, some participants objected that technology is not necessarily the answer in a country like South Africa with high levels of corruption, noting that 'it is therefore doubtful whether technology can be, or should be, fully used to run all aspects of voting and/or tabulation'. It was noted that several developed countries stopped using e-voting, mostly citing those risks that outweigh the advantages. For instance, the Netherlands adopted electronic voting in the mid-2000s but returned to manual voting because the security and management of the equipment were not properly regulated.

*Election Management Body and the Challenges Involved in Ensuring
Voter Turnout*

Most voters agreed that the IEC officials need proper planning and adequate training to manage the elections and ensure that voters are not frustrated with registration and voting. One participant commented that 'IEC must improve its service delivery; I had recently accompanied a family member to our local office and the workers there had a technical problem which persisted a couple of visits'. It was highlighted that local offices must be provided with enough technical support in time and should bring polling stations closer to the people. When probed about whether the increase of polling stations was due to the increase of voters, some participants argued that the increase of polling stations was not caused by high voter turnout but simply by the demarcations of wards and constituencies which resulted in the increase of polling stations. Another politician opined that the demarcation of voting districts was a strategy to break up areas supporting opposition parties, what he termed gerrymandering, in favour of the ruling party. The consensus of opinion is that the increase of polling stations is indeed an innovation helping to reduce the long queues that often resulted in voter impatience or lack of interest in voting. It was highlighted that the Independent Electoral Commission (IEC) has over the years adjusted and increased the number of voting districts (VDs) because of population growth and population movement. One participant argued that 'polling stations may be increased but that does not guarantee that voters will turn up'.

Participants noted that the IEC is affected by inefficient processes due to unpreparedness; for instance, some said the late delivery of election material had been a perennial problem. One politician noted that 'the IEC needs to tighten up the role of its staff in manipulating election process which can create certain level of anxiety for voters and instability across the country'. Another voter opined that 'there must be proper planning by both Parliament and the IEC in making sure that everything is in order in time, for instance Parliament to give the IEC enough time before pronouncing the election date and Parliament to allocate budget for IEC to procure all the needed equipment and IEC distribution of election material on time'.

Participants concluded that these electoral reforms are needed but should be accompanied by easy digital tools for voter participation, although there are fears of human manipulation. Some participants argued that both proportional and constituency-based electoral systems are needed. Constituencies should be introduced to the proportional representation system to ensure that politicians have specific, geographically defined communities to represent and to whom they are held accountable. They added that voters must have the right to elect the

president of the country directly, as is the case in many established democracies across the globe, instead of the (approximately) 3 000 delegates at a party congress choosing a party president to be foisted onto an entire nation. Another participant commented that 'It is necessary to have a structured debate around these issues and it is imperative that we, as political parties, must formally engage as primary stakeholders of the IEC and South Africa's democratic processes'.

DISCUSSION

This article is based on the findings of the study, as shown by previous studies, that electoral reforms should be implemented to curb or deal with societal problems on grounds such as corruption, lack of accountability and transparency. The findings of the study show that low voter turnout is because of voter apathy due to the incompetence of public representatives. Political analysts take the view that voters should participate in party nominee selection suggestions rather than having parties impose candidates through a closed party list. The current party system is seen as inadequate for dealing with the corruption and lack of response by public officials; hence a need to reform or include voters in the selection processes to elect candidates of their choice rather than imposing candidates through a closed party-list. Constituency candidates should come not only from the closed party-list but also the communities in which candidates purport to lead. This article therefore joins the debate that South Africans should adopt a mixed electoral system not only at local government level but also at national and provincial level with a constituency-based voting.

Voters should be able to elect an independent president or the member of parliament of their choice without being entirely dependent on the party system to foist a candidate on them. Several electoral systems across the globe do allow voters or party members to elect a party candidate or independent candidate of their choice, though that does not guarantee either competence and accountability. There are still public protests in the aftermath of the election because there is no clear framework for voters to recall corrupt or incompetent public representatives. Maimane's progressive idea is that the association of independent candidates should formulate policies in which communities will be able to elect as well as recall public representatives. This article argues that political parties should not only involve voters to elect party candidates at local government level, but also consider voter participation to recall incompetent public representatives. Gumede (2020b) also maintains that there must be a framework whereby voters participate in recalling incompetent public representatives, but this can only be possible if voters know the candidates being voted for in their constituencies.

A striking feature of the evidence collected is that voters favoured reform (candidate selection by voters and even the inclusion of independent candidates) more than the politicians. Mathe (2021) argues that governments and politicians are likely to oppose the implementation of electoral reforms that threaten their existence or dominance. This article further argues that consensus is key, and every innovative idea meant to improve democracy should be accepted for its sustainability, responsibility, and accountability. Mathe (2020b) argues that technological innovations and electoral reforms utilised for the good enhance democracy. Thus, a mixed electoral system is progressive if it allows voters to select party candidates at constituency level.

A mixed electoral system such as the inclusion of independent candidates at provincial and national level will enhance democracy and possibly defuse party dominance.

The implementation of electronic voting or other technologies to enhance voter participation will not be fully effective if South Africa does not deal with the political challenges emanating from the current electoral system. The findings of the study have shown that low voter turnout is a consequence more of poor governance than of the challenges of voting or voter registration. Thus, technological electoral tools can only be supplementary where there is conducive ground for voter participation. Mathe (2020a) argues that technology cannot be used as a panacea for socio-political problems. Social constructionists also note that technology cannot override electoral problems or undo societal problems without policies or human effort for change (Dahl 1989, p. 339; Castells 2004). Thus, digital voting is secondary, and the primary objective is the establishment of voter participation in all democratic processes. Hence electoral amendment is fundamental, coupled with complementary and inexpensive (or affordable) technology for voter participation and education. Meaningful electoral reforms should be promoted for sustainable democracy. However, the problem is that some stakeholders will try to avoid reforms or technologies that threaten their dominance. Political goodwill is essential for sustainable democracy.

CONCLUSION

The article discussed the challenges faced in the current electoral system in South Africa. It also introduced a perspective on the electoral reforms and technological means that the country could implement to ensure that voters participate in candidate selection processes for a sustainable democracy. The current political problem in South Africa is that corruption, incompetence, and a lack of responsibility have become common in party institutions, leading to lower voter turnout. This article therefore emphasises that voter involvement should be utilised to enhance democracy with an easy facilitation of digital tools.

Acknowledgement

The author gratefully acknowledges funding received from GES 4.0.

----- REFERENCES -----

- Booyesen, S & Masterson, G 2009, 'South Africa', In D Kadima & S Booyesen (eds) *Compendium of Elections in Southern Africa 1989-2009: 20 Years of Multiparty Democracy*, pp. 399–402, EISA, Johannesburg.
- Castells, M 2001, *The Internet Galaxy: Reflections on the Internet, Business, and Society*, Oxford University Press, Oxford.
- Castells, M 2004, *The Information Age: Economy, Society and Culture Volume II the Power of Identity*, Blackwell, Malden.
- Chiumbu, S 2015, 'Public servant or censor? The South African Broadcasting Corporation in the era of political television advertising', *Journal of African Elections*, vol. 14, no. 1, pp. 149–170.
- Dahl, R 1989, *Democracy and its Critics*. New Haven, Yale University Press.
- Dalton, R J 2014, *Citizen Politics: Public Opinion and Political Parties in Advanced Industrial Democracies*, Thousand Oaks, CQ Press.
- Dhawraj, R 2013, *An investigation of the Democratic Alliance's political public relations campaign in the 2009 South African general elections, including how social networking site Facebook was leveraged to help increase the party's vote share*, MA Thesis, University of South Africa, Pretoria.
- Electoral Institute for Sustainable Democracy in Africa 2019, *Election Observer Mission to the 2019 National and Provincial Elections in South Africa*. Available at sou2019eom0.pdf (eisa.org)
- Electoral Task Team, 2003, *Report of the Electoral Task Team* (Van Zyl Slabbert Committee), Government Printer, Pretoria.
- Ellul, J 1990, *The Technological Bluff*, Eerdmans Publishing Company, Grand Rapids.
- Friedman, S 1999, 'No Easy Stroll to Dominance: Party Dominance, Opposition and Civil Society in South Africa', In H Giliomee, & C Simkins (eds) *The Awkward Embrace: One-Party Domination and Democracy*, pp. 97–126, Tafelberg, Cape Town.
- Gumede, W 2005, *Thabo Mbeki and the Battle for the Soul of the ANC*, Struik Random House, Cape Town.
- Gumede, W 2015. *Electoral system alienates voters*, Democracy Works Foundation, Available at <https://democracyworks.org.za/electoral-reform-needed/>
- Gumede, W 2020, *South Africa in desperate need of electoral overhaul*, Democracy Works Foundation. Available at <https://democracyworks.org.za/south-africa-in-desperate-need-of-electoral-overhaul/>
- Gumede, W 2020b, *Policy Brief 35: South Africa needs electoral system overhaul*,

- Available at Policy Brief 35: South Africa needs electoral system overhaul | DEMOCRACY WORKS FOUNDATION
- Hoff, J 2000, 'Technology and social change: The path between technological determinism, social constructivism and new institutionalism', in J Hoff, I Horrocks & P Tops (eds), *Democratic Governance and New Technology: Technologically Mediated Innovations in Political Practice in Western Europe*, Routledge, London.
- Horowitz, D 1985, *Ethnic Groups in Conflict*, Berkeley, University of California Press
- Joerges, B 1999, 'Do politics have artefacts?', *Social Studies of Science*, vol. 29, no.3, pp. 411–431.
- Kedzie, CR 1997, *Communication and Democracy: Coincident Revolutions and the Emergent Dictator's Dilemma*, RAND, Santa Monica.
- Lipset, S 1983, *Political Man: The Social Bases of Politics*, Heinemann, London.
- Markus, B, Laslier, JF & Skowron, P 2018, 'Multiwinner approval rules as apportionment methods', *Journal of Theoretical Politics*, vol. 30, no. 3 pp: 358–382. <https://doi.org/10.1177/0951629818775518>
- Mathe, L & Caldwell, M 2017, 'A Content Analysis of Readers' Comments on Political and Economic News Articles from Zimbabwe Online Media', *KRE Journal of Communication*, vol. 8, no.1, pp. 56–68.
- Mathe, L 2020a, 'Rethinking Ethical Journalism in the Worsening Socio-Economic and Political Crisis in Zimbabwe', *Communicatio*, vol. 46, no. 2, pp. 20–43.
- Mathe, L 2020b, 'The Challenges and Opportunities of a Web 2.0 Election: The Case of Zimbabwe', *Journal of African Elections*, vol. 19, no. 2, pp.125–145. <https://doi.org/10.20940/JAE/2020/v19i2a7>
- Mathe, L 2021, 'Imagining Diaspora Vote from Zimbabweans Abroad: Electronic Voting or Postal Voting', *International Journal of Innovation, Creativity and Change*, vol. 15, no.3, pp. 303–320.
- Mattes, R & Gyimah-Boadi E 2005, 'The Quality of Two African Democracies', in L Diamond & L. Morlino (eds), *Assessing the Quality of Democracy*, pp. 238–273, Baltimore, Johns Hopkins University Press.
- Mutsvairo, B & Karam B 2018, *Perspectives on Political communication in Africa*, Palgrave Macmillan, London.
- Pukelsheim, F 2014. *Proportional Representation: Apportionment Methods and Their Applications*, Springer.
- Putnam, RD 2000, *Bowling Alone: The Collapse and Revival of American Community*, Simon & Schuster, New York.
- Schulz-Herzenberg, C 2019, 'The Decline of Partisan Voting and the Rise in Electoral Uncertainty in South Africa's 2019 General Elections', *Politikon*, vol. 46, no. 4, pp. 462–480.
- Schulz-Herzenberg, C 2019, 'The new electoral power brokers: macro and micro

- level effects of 'born-free' South Africans on voter turnout', *Commonwealth & Comparative Politics*, vol. 57, no.3, pp. 363–389.
- Seekings, J 2014, 'The social and political implications of demographic change in post-apartheid South Africa', *The ANNALS of the American Academy of Political and Social Science*, vol.652, no. 1, pp. 70–86.
- Southall, R 1998, 'The Centralisation and Fragmentation of South Africa's Dominant Party System', *African Affairs*, vol. 97, pp. 443–469.
- Winner, L 1986, *The Whale and the Reactor: A Search for Limits in an Age of High Technology*, University of Chicago Press, Chicago.

Appendix A

Electoral Reforms and Digital Tools in South Africa (Semi-Structured Questionnaire)

1. What are the challenges faced so far with the current electoral system in South Africa and how can technology be integrated to transform it? Probe: How can we incorporate technological means to reform the electoral system?
2. How do you suggest voters participate internally towards a closed party list of candidates? Voters want to have a say in choosing candidates?
3. In what way do you think e-voting will assist changes in South Africa's electoral system?
4. Can voter turnout increase through e-voting and what are the complications?
5. There is a report that recommended the increase of polling stations to curb long queues. what is your perspective concerning this?
6. The last election there was complaints of late delivery of voting material by IEC. How can we avoid such a logistic problem in the future?
7. Concerning the inclusion of independent candidates into the electoral system, do you think the electoral system would be workable to accommodate such changes?
8. Any channels of voter participation after elections, e.g. recalling of incompetent candidates?
9. What is your take on the perspective that the ballot box must have an extra tick space for voters to express their unhappiness with parties contesting?
10. Any changes or recommendation you would like the IEC to work on?

THE RURAL ELECTORATE IN ZIMBABWE'S ELECTIONS 1980-2018

Consciousness and Voting Preferences

Terence Tapiwa Muzorewa and Mark Nyandoro

Terence Tapiwa Muzorewa is a lecturer in the Department of Development Studies, Midlands State University, Harare, Zimbabwe

Mark Nyandoro is a professor of Economic History in the Department of History, Heritage and Knowledge Systems, University of Zimbabwe

ABSTRACT

This article analyses rural electorate consciousness and urban voting preferences during Zimbabwe's elections from 1980 to 2018. The article gives agency to the rural dwellers in elections, contrary to the general perception of a captured rural voter and liberal urban voter. To analyse rural voters' electoral consciousness, the paper uses primary sources (electoral statistical records), oral interviews (notwithstanding the prevailing COVID-19 lockdown environment) and secondary literature to derive research data. The data helps to determine the differences between urban and rural ideologies, culture and ethics which manifest in the political party preferences of the social groups in the two geographical spaces. The paper concludes that rural dwellers tended to support the ruling party at elections, though they were more vulnerable to political patronage and seemingly forced participation in electoral processes than the urban voters. Nonetheless, complex cultural, economic, social and historic factors compelled them to participate in elections more than their urban counterparts. Thus, rural voters can be viewed as conscious participants in electoral processes with varied, albeit mobilised participation and political ideologies.

Keywords: elections, rural-urban voting preferences, political participation, ZANU-PF, MDC, African nationalism, Zimbabwe

INTRODUCTION

This article analyses rural electorate consciousness and urban voting preferences during elections in Zimbabwe, from 1980 to 2018. It argues that broad but

intriguing political, historical, economic, social and demographic factors inform the political party preferences among Zimbabwean voters in elections. These factors are interesting, but they are also too broad to provide an answer to our targeted political question. It is thus our submission that all political phenomena and questions can be explained by political, historical, economic, social, and demographic factors. However, the factors which directly and indirectly influence voting patterns in Zimbabwe's elections need elaboration. In this paper, we attempt to move from the intriguing, although abstract level to analyse specific political, socio-economic, historical, and demographic factors related to our answer. Based on evidence from our research, we contend that the issues determining voter preferences in the country are complex.

At the political level, the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) government participates in elections by using its political position to intervene not only in political matters, but also in the economy and other sectors. It influences elections primarily through the medium of nationally-enacted electoral laws, policies, and political strategies. These are designed to lure voters to the ruling ZANU-PF party, and at the same time deploy strategies to destabilise political opposition. In elections, the party's position is strengthened by taking advantage of socio-economic factors such as the rural or urban area-based deprivation of households. Most households, beset by an unabating economic crisis which has torn Zimbabwe's social fabric since the 1990s, find themselves deprived of not only political leverage but also education (e.g., voter education), occupation/profession, employment, income and sustainable livelihoods.

Demographic factors such as age, sex, income level, marital status, race, employment, location (rural or urban), home ownership (or lack of), and level of education or educational achievement are also used during elections to prepare people to vote for a particular political party. ZANU-PF party elites often appealed to conscience and consciousness of the country's liberation history to discourage people from voting for opposition political parties. Here intimate relationships between people and historical events are invoked. The people are reminded – at times through intimidatory propaganda – of their historical and indeed historic commitment to the freedom struggle of the 1960s and 1970s. They are also told repeatedly that ignoring the past is tantamount to ignoring the present. Some are even scared of a resumption of war if an opposition party is elected to power. These historical factors have influenced rural electorate consciousness and voting preferences in Zimbabwe since the first multi-party elections in 1980.

In the midst of the ruling party's multiple election-winning strategies, a line has been drawn to separate the rural from the urban voter. The rural voter has been widely viewed as a victim and captured accomplice of the party's election victories, while the urban voter has been perceived as a liberal progressive voter

seeking a change in government. This paper argues that although ZANU-PF is accused of capturing the rural peasantry and employing unorthodox strategies to win elections, the rural voters were politically conscious and voted for a party they thought would meet their social, cultural and economic aspirations while at the same time fitting into their liberation ideological conceptions.

Our paper therefore questions the applicability of the captive constituency effects theory in analysing Zimbabwean elections and voting patterns. The captive constituency theory states that in comparison to their urban counterparts, rural voters are more likely to have less political autonomy when voting. Koter (2013) argues that rural areas are 'captive constituencies' and do not have the freedom to choose how to vote, because of the influence of social power structures. He believes that the rural areas have a tighter social structure which makes the electorate less autonomous.

Koter also suggests that urbanites tend to be more individualistic in their choice of a political party, while the rural electorate cast their vote based on a solidarity steeped in history and in the captive constituency theory. This theory argues that the poorer, the more remote, more economically marginal and less literate an electoral constituency is, the more isolated and less autonomous its voters are likely to be (Wahman & Boone 2018, p. 189), thus removing the sense of agency from the rural electorate. Our paper attempts to give agency to the rural dwellers as we do not view them as necessarily captured. We question the captive constituency effect theory and this ascribed captive status as it relates to Zimbabwe's elections. Instead, we argue that rural people were not passive voters and were instead responsible for creating the political culture and social structures that inform their voting preferences.

We therefore proffer the social group theory of voting behaviours as an alternative, as it explains Zimbabwe voter preferences better than the captive constituency theory. The social group theory we are suggesting shows that social, economic, religious and other forms of identification relating to political interaction inform voter choices (Aiba 2002). According to this theory, the individual learns the partisan predisposition conformable to the political traditions of a group. Individuals are joined with others who have shared interests. Filer et al. (1993) show that members of a group vote when it is economically optimal for them to do so. Similarly, rural residents in Zimbabwe were informed not only by promises given by ruling elites of economic improvement, but also by their shared peasantry structures, values and ethos. This also applied to the urban voters who mostly had a shared interest in a semi-liberal urban economy.

The paper is divided into six main sections. Following the introduction, the first section engages with the broad literature on elections and the relevance of the literature to the Zimbabwe electoral situation. In the second section we discuss our

research methodology and how it supports our aim, objectives and conclusion. Section three provides a background to elections in post-colonial Zimbabwe to provide a contextual history. In section four, we analyse key economic and social determinants of voting preferences in the country, as outlined in the introduction; discuss the distinctive gap between rural and urban dwellers and their voting preferences; and also interrogate ZANU-PF's empowerment programmes to discern who is capturing who, ZANU-PF or the people? In the fifth section, we demonstrate the legacy of the liberation war on voter preferences and related questions. In the sixth and final section, we draw on extant literature to explore what we have termed 'violence consciousness' to explain the interface between rural electorate consciousness and general voting preferences in Zimbabwe.

LITERATURE REVIEW

This paper contributes to the larger debates on elections in Zimbabwe and Africa, many of which acknowledge that there are several different factors influencing voters' preferences during elections. For example, Wahman and Boone (2018) illustrate that electoral voting dynamics vary across space, even within a single country, and subnational factors specific to geographic context matter in understanding voting behaviour in Africa. They believe that voting trends for candidates change because the urban electorate base their votes on candidates' performance and whether they have fulfilled the promises they made during pre-election campaigns. In Wahman and Boone's (2018) view, the captive constituency effect is likely to be pronounced in sparsely-populated rural constituencies where subsistence agriculture and pastoral activities dominate. Our study acknowledges that subnational factors in rural and urban areas influence voters' preferences in Zimbabwe elections. Bratton and Masunungure (2018) and Wahman and Boone (2018), in particular, refer to a polarised electorate, and the rural voter or the ruling party supporters as captured. However, rural voters do exhibit agency in that they are conscious of the decisions they make – contrary to views of them in Zimbabwe as a captured constituency.

The extant literature on elections in Africa (for example Boone and Kriger (2010), Magure (2014), and Raftopoulos (2013)) views rural voters as victims of politicians who use land as a source of patronage in elections. Boone and Kriger (2010) argue that in Zimbabwe and Côte d'Ivoire for example, the allocation of land has been the prerogative of the central party-state and land has been used by the respective ruling parties in those countries to 'buy' votes. In Zimbabwe in 2000, ZANU-PF was faced with its stiffest political opposition and sharpest economic decline since the inception of its rule in 1980. The party then orchestrated land

occupations, massive land confiscations and the allocation of white-operated farms to mobilise and reward party loyalists and, to a very limited extent, opponents, in a process known as the Fast-Track Land Reform Programme (Boone & Kriger 2010, p. 175). These strategies do not show voter preferences, but voter coercion.

Many studies of Zimbabwe's elections cite violence, coercion or coercive tactics and other unethical practices in elections. However, Magure (2014) and Raftopoulos (2013) argue that although ZANU-PF used authoritarianism and hate speech to win elections, it is important to acknowledge the popularity of the party in rural areas. They cite the ruling party's populist approach regarding land distribution, land rights allocation, indigenisation and empowerment policies as factors that swayed the rural vote in favour of ZANU-PF. This paper uses land as an analytical lens to assess the forms of consciousness that influenced rural voters' political party preferences, and also considers other tactics like organised violence.

Kriger (2005), for instance, demonstrates how ZANU-PF has used not only land but has also organised violence and intimidation as strategies to ensure victory in every election since 1980. Besides violence, the ruling party engaged strategies that demonised its opponents as being reactionary, subversive, anti-land reform and stooges of the whites or the West (Kriger 2005, p. 2). Voter agency is missing from these tactics which view voters as victims of the ruling party's violent strategies. Our research on Zimbabwean elections acknowledges that elections were sometimes characterised by violence and unscrupulous strategies; however it also recognises the active and conscious role played by rural voters in this continuum to sustain the political fortunes of ZANU-PF.

In addition to this apparent connivance by rural voters with the ruling party-state, and allegations of violence and coercion, scholars point to various forms of rigging as part of the election-winning formula used by ZANU-PF (Southall & Slabbert 2013). ZANU-PF allegedly controlled the electoral machinery, including the Zimbabwe Electoral Commission (ZEC), the Registrar General (RG) and his office. Through control of these election institutions, the ruling party has been accused of wielding power to tamper with the voters' roll and the 'counting of what is contained in the ballot boxes [or the votes]' (Southall & Slabbert 2013, p. 140). Another allegation is that during election time ZANU-PF clandestinely bused in rural voters to urban areas in an endeavour to dilute the MDC's urban vote. It is clear that the rural voters who were allegedly bused in to some urban electoral constituencies were conscious of their actions.

Ndlovu-Gatsheni (2012) contextualises the past experiences of Zimbabwean elections by identifying broad historical factors that gave ZANU-PF leverage in elections. He identifies undemocratic processes and cultures which shape

Zimbabwean politics. These include the country's patriarchal and violent pre-colonial history, colonialism which ushered in undemocratic traditions, and African nationalism, together with the armed liberation struggle, which were marked by incidences of violence. For Ndlovu-Gatsheni (2012), these three factors have shaped the undemocratic nature of Zimbabwean elections. His work helps explaining the genesis of violent actions symptomatic of political parties' colonial-era liberation war strategies. In the post-colonial era, the strategies were meant to claim new, independence-found access to economic, social and political opportunities and wealth status, and arguably allay the political and economic deprivation of the past.

Ndlovu-Gatsheni's (2012) study, however, does not account for voter party preferences and consciousness during elections, as the voter is viewed as a victim of undemocratic election processes. Some scholars of Zimbabwe's elections mention violence, coercion and other unethical practices in elections that help ZANU-PF win polls. However, the popularity of the party in the rural areas due to its mobilisation capacity and the way it appeals to the old peasant consciousness dating back to the liberation struggle days, is compared to the MDC and other opposition parties, relatively unquestionable.

RESEARCH METHODOLOGY

In assessing voters' political consciousness and preferences, this article uses qualitative research methods drawing data from both primary and secondary sources. Primary data was derived mainly from the documents of election organisations and institutions like the ZEC, the Zimbabwe National Statistics Agency (ZIMSTAT), Afrobarometer and others. Interviews and raw statistical data were vital for the quality of our study. Personal interviews as data-gathering tools complemented primary documents. Politics and elections being sensitive topics in Zimbabwe, most of our interviews were based on snowball sampling where interviewees pointed us to individuals familiar to them so that they would accommodate our questions during the research.

Two group interviews were conducted in Harare. In some cases, our study uses pseudonyms for interviewees who did not want their real names used for fear of potential reprisals. Due to COVID-19 lockdown restrictions, some of the interviews in 2021 were conducted telephonically and through a wide array of social media and virtual platforms, while others were face-to-face interviews. Our statistical data and engagement with secondary sources (journals, books, articles and newspapers or the print media) were useful in situating our study in the context of a broader Zimbabwean election discourse, and in grappling with both the captive constituency effect theory and our preferred social group theory as applied to elections in the country.

DISCUSSION

Election Background: Post-Colonial Zimbabwe

In terms of the Lancaster House Agreement of 1979, and yielding to pressure from liberation movements and the armed strife of the Second Chimurenga, the colonial government finally conceded to the 'internal settlement' of Ian Douglas Smith of the Rhodesian Front (RF), then Prime Minister of Rhodesia. This resulted in the short-lived Zimbabwe-Rhodesia government of Abel Muzorewa in 1979. According to Sithole and Makumbe (1997, p. 128) the 'internal settlement' enfranchised the majority of black Zimbabweans who had not been allowed to vote during the colonial period. However, in the 1979 elections, the major political parties representing mainstream nationalism were fighting a guerrilla war and therefore did not take part in the election (ibid.).

Their non-participation in that election raised legitimacy issues about the election process which culminated in the 'all-party' 1980 general elections. In the February 1980 multi-party elections, about 91% of the electorate voted, against the backdrop of support for ZANU-PF from a strong rural constituency. The rural areas had been virtually no-go areas for other political parties and ZANU-PF therefore won the elections with 62% of the ballot and ascended to power (Good 2002, p. 8). The barring of other parties, which was not quite as obvious in the first decade of independence, intensified in the 1990s.

However, by that time, ZANU-PF's dominance in the rural areas was being challenged. Evidence of this challenge to the ruling party in its traditional strongholds included the fact that in 1985 there was a 97% voter turnout and ZANU-PF won, while in 1990 the party won by a declining 78%; and in 1995 it won by only 61% (Good 2002, p.8), marking an apparent shift in the 1990s. Although ZANU-PF won every multi-party election resoundingly between 1980 and 2008, it was often accused of using unorthodox and undemocratic strategies such as vote buying, intimidation through violence, tampering with the voters' roll and monopolising state media. These widely discussed undemocratic tactics on the part of the ruling party remained key to the liberation party's victories.

The pattern of voting, the role of the rural areas and the government in ZANU-PF election victories from 1980 to 2008 have also been analysed. According to several scholars, most of the victories demonstrate that violence and the violation of electoral rules were rife. Gregory (1981), Kriger (2005), and Sithole (1986) were not seriously concerned about ZANU-PF's use of violence and intimidation in 1980 to win power in the first post-colonial election. They attributed ZANU-PF's electoral victory to its effective guerrilla organisation and mobilisation of popular support. However, well-documented violence and other tactics enabled the ruling party to maintain its political presence and influence on Zimbabwe's

electoral processes between the 1980s and 1990s. All this changed drastically after 2000 as ZANU-PF's hegemonic grip on power began to wane under the relentless challenge from opposition politics. The MDC, perceived as the 'saviour' of the people, posed a serious threat to Mugabe and his not-so-popular party, as demonstrated by the ruling party's poor showing in the first round of polling in March 2008. In addition, 2008 marked an important turn in Zimbabwean politics when for the first time ZANU-PF met stiff competition in the form of the MDC formation led by Morgan Tsvangirai.

Commonwealth observers (2018, p. 6) claim that the MDC won the first round of the election in March 2008. However, none of the parties achieved the 50% plus one threshold required by the Constitution to form a government. Given the ruling party's excellent record in previous elections, the outcome of the first round of polls had not been anticipated. The electoral stalemate and impasse between the two major political contestants resulted in the declaration of an election re-run. This in turn resulted in violence generally alleged to have been unleashed by ZANU-PF on MDC supporters in the countdown to the run-off poll scheduled for June 2008.

During the 2008 election-related violence 100 people allegedly died, 200 went missing, thousands were beaten and tens of thousands were forced out of their homes by ZANU-PF militia (*The Guardian* 2008). Consequently, the MDC refused to participate in the election re-run scheduled for June 2008, citing many irregularities, including violence inflicted by ZANU-PF on the opposition formation (Commonwealth 2018, p. 7). The events of March-June 2008 were then followed by a lull in elections as a compromise Government of National Unity (GNU) was established in 2009. This in many ways neutralised ZANU-PF's political dominance.

The GNU was, however, short-lived, with ZANU-PF emerging victorious in the 2013 election. In contrast to earlier polls, the 2013 election was relatively peaceful and the MDC lost not only as a result of ZANU-PF's manipulation of the poll, but because of internal divisions. Other than internal wrangles in the MDC, their election campaign was less effective than that of ZANU-PF because of financial constraints (*The Guardian* 2013). However, notwithstanding the perennial national economic crisis in Zimbabwe, ZANU-PF won the election due to comparatively sound funding. The electoral victory not only helped the ruling party to reassert its political dominance, but ZANU-PF's election victory also signalled the end of the unity government. Thus, from 2008 to 2018, ZANU-PF reclaimed hegemony over elections and has been winning with the rural areas acting as the main swing constituencies for the ruling party.

Clearly, the major trend in the history of Zimbabwean elections is the divide between urban and rural voters. The majority of rural voters have voted for

ZANU-PF while the urban areas have become enclaves for opposition politics. Hence, the rural dwellers who were numerically superior provided more votes for the ruling party compared to urbanites, and preliminary election forecasts reflected the general outcome of elections even before they took place. To add to the comparative advantage of ZANU-PF, rural dwellers were well known for better participation in the election process than urban residents. In fact, the 2018 election showed that the percentage of registered voters was lowest in urban provinces, with Bulawayo having 63.3% and Harare 66.9%, while rural provinces such as Matabeleland North had 87% and Mashonaland East 86.1% (ZEC 2018). Although a ZEC official pointed out that there were fewer polling stations in urban areas than in the rural areas (which affected the voting percentages of urbanites), he admitted that voting was usually high in rural areas. The reasons for this may vary, but voter apathy in urban areas accounts for the significant variance.

The population distribution of Zimbabwe given by ZIMSTAT (2017, p. 32) also confirms that the country's population is mostly rural with 68% of the total found, notably, in the communal and resettlement areas. All provinces in the country have an urban area and the urban population constitutes 32% of the total population estimates (ibid.). Under these circumstances, voter preferences therefore exhibited a distinct dichotomy between rural and urban Zimbabwe. These preferences were influenced by different economic, social and geo-political structures characteristic of the two geographical spaces.

Economic and Social Determinants of Voting Preferences

It is important to understand rural voters' political party preferences based on their economic structures, which are different from modern urban economies. As illustrated in the social group theory of voting, members of a group vote for a party which best serves their economic and other interests. Zimbabwean settlements and economies are divided into a two-tier, dual economic system, a moderated urban economy and extremely rural economy. The different needs of citizens in these two geographical spaces are reflected in and by the voters' political preferences. In contrast to the rural areas the urban way of life is neoliberal, capital-oriented, based on proletarianism and informal entrepreneurship.

Unlike their rural counterparts, the urban population depends more on employment and a conducive environment for trading which is sustained only by a stable money economy. They need the public amenities – housing, water, sewerage reticulation, electricity supply, modern forms of communication and transport systems – of an urban infrastructure. However, the government (and city councils) have failed lamentably to provide these, and this has frustrated urban dwellers who in turn seek refuge in liberal opposition politics. According to Dewa

(2009), because of the frustrations of poor living conditions, most of the people in urban areas do not consider the governance and administrative capabilities of candidates in elections, but vote for a political party that promises change. Dewa's argument was confirmed in an interview on 21 April 2021 by Chareka and Matambo, residents of Ruwa Town, who admitted that they did not even know the names of the councillor and Member of Parliament for whom they voted in the 2018 elections. Matambo therefore believes that most of his friends in Ruwa Town voted for the MDC in anticipation of change after suffering decades of unemployment and economic crisis under a ZANU-PF-led government.

Structurally, the MDC and other opposition political parties are perceived as being able to accommodate and relate to the plight of the urbanites more than that of rural communities. The MDC party, which was launched in 1999, was born out of the Zimbabwe Congress of Trade Union (ZCTU). It was rooted in the labour movement and attracted membership and support from the workers, the business community and former white farmers (Laakso 2003, p. 157). The opposition party was launched at a time when the urban population was enduring the negative impacts of the neo-liberal Structural Adjustment Programme (SAP) which brought suffering to urban areas. SAPs reduced government subsidies on services such as health, education and local government service delivery, resulting in increased service fees for the urbanites. The high service fees, coupled with mass retrenchments, were a result of the SAP policy of reducing government expenditure.

The effects of structural adjustment were felt throughout the country, but less in rural areas than in the urban areas – hence the support for the ruling party in the former and aversion to it in the latter. Harding (2010) therefore contends that rural residents voted for incumbent parties because they suffered less during SAPs than did the urban dwellers. In a survey conducted by the Mass Public Opinion Institute (MPOI) in 2005, more than 90% of the sampled population in Harare expressed concern about their personal living conditions and blamed the government for the poor economic environment. Hence, the MDC was perceived as representing the interests not only of people living in urban areas, but also the interests of few liberal rural dwellers mostly residing in rural service centres or growth points. Faced with debilitating urban conditions, most of the urban voters thus turned to opposition political parties in anticipation of change in their living conditions, and indeed a change of government.

Interviews we conducted in Harare revealed that most urban voters believed that the rural electorate was letting them down in their quest for a change of government. Yallah, an urban resident of Harare, interviewed in a group on 29 April 2021, was quick to curse rural voters when asked about his opinion of their ZANU-PF preference. Yallah professed a deep dislike of the rural electorate,

blaming them for the economic woes bedevilling the country. He argued that those who voted for the ZANU-PF were greedy and did not have the national interest at heart. During the same group interview, Mundawarara stated that he believed that rural people were not aware of what was expected of government and were often fed false narratives and propaganda by ZANU-PF. The interviews therefore reveal concurrence between scholars, opposition political activists and ordinary urban residents who question the rationality of rural dwellers in decision-making. The arguments of these strata of society in reference to their social position, education and political affiliation invariably negate the agency of people in rural areas during elections.

These arguments, however, fail to appreciate that the rural areas, normally characterised by peasant agriculture, are different from the towns which are dominated by the urban proletariat and an informal trading economy. The rural areas are largely populated by peasant farmers who are fully engaged in subsistence farming while a few people are engaged in off-farm activities in service centres. Of those employed in rural areas, the highest proportion (52%) is in agriculture-related occupations, followed by the paid employee category (23%) (ZIMSTAT 2014).

Peasant forms of economic organisation are inextricably linked with rural social structures and institutions. Thus, peasant economic objectives are necessarily structured by less economic (profit-making) aims (Scott 1976). As Zimbabwe's rural economy is peasant in nature it does not require a sophisticated supporting infrastructure from the government. The rural population provides almost everything for itself with minimum government aid. They build their own homes and sometimes schools with cheap and available material such as poles, mud, grass thatch and home-baked bricks. For Frescura (1980), the distinctive character of rural architecture is therefore derived directly from its use of natural material. Unlike urban areas where building materials are expensive, rural architecture uses its immediate environment as a ready quarry for the materials necessary for construction.

The Distinctive Gap between Rural and Urban Dwellers and their Voting Preferences

Traditional dwelling units in rural areas are found in old-style family settlements in which a number of buildings are made of pole and dagga/bricks, often with thatched grass roofs. More than half of the households (53%) in rural areas are thus either traditional or mixed (ZIMSTAT 2012, p. 57). ZIMSTAT (2012, p. 58) evidence shows that the proportion of households in modern dwelling units ranged from 13% in rural Matabeleland North. In Bulawayo (urban), 99% of

households have their main source of water on the premises while in Matabeleland North (rural) it is 13% (ZIMSTAT 2012, p. 57); 91% of urban households used flush toilets compared to 5% in rural households (ZIMSTAT 2012, p.67). In terms of energy 92% of households in rural areas used wood for cooking whilst 92% of urban households used electricity for cooking (ZIMSTAT 2012, pp. 57). The non-availability or lack of these services in towns influences the urban electorate (unlike the rural electorate), to vote for opposition political parties in elections. In comparison, the peasants grow their own food and use firewood as fuel. Rural households do not require sewerage reticulation since they use pit toilets and get their water from rivers and wells. Rural conditions therefore dictate that most of the rural dwellers thrive on limited infrastructure and government assistance. This is why, in an interview on 18 April, one of the war veterans, Madzinga said mockingly 'the COVID-19 and cholera pandemics have taught urbanites that rural areas are better than urban areas'.

Madzinga's argument was based on the mistaken belief that rural areas are endowed with clean river water, fresh air, healthy food, and admirable conditions not found in urban slums. However, this is not absolutely correct given the endemic environmental contamination in Zimbabwe, where rivers tainted with industrial waste pollute the rural areas. According to Madzinga, the opposition MDC-led urban councils have turned most urban areas into slums with limited public amenities, but the rural population can thrive without urban infrastructure. Although rural and urban frontiers were becoming fluid and there were some intersections of rural and urban life, especially in peri-urban areas, there remained a huge population of rural residents in remote areas with little or no contact with urban life. These, however, are less aggrieved than the urban population and invariably vote for the ruling party in elections. Because of their apparent economic conservatism and political localism, rural and peri-urban dwellers were viewed by urbanites as constituting a problem for political and economic modernisation and change (Roberts 1990).

As stated earlier, this peasant social and economic structure is heavily dependent on land. ZANU-PF took advantage of this situation to create a social base weakened by allegiance to a party that was offering a commodity (land) to the landless rural people in return for political loyalty. A study on factors influencing voter behaviour in rural Zvishavane shows that 61% of voters favoured ZANU-PF because of the party's manifesto, which clearly supports land resettlement (Satiya 2018). The Zvishavane example shows that Zimbabwean peasants have a strong psycho-spiritual attachment to the land and are committed to utilising and defending the land of their ancestors, whose possession they feel they owe to ZANU-PF.

The land redistribution process in the 2000s was thus an astute political move by ZANU-PF to appease the rural peasantry (Raftopoulos 2013). Land redistribution has given 70% of the land to the small farm producers in a process described by Raftopolous as re-peasantisation. After 2000, due to what has been seen as ZANU-PF benevolence, the majority of the rural dwellers had access to relatively cheap land. Magure (2014, p. 22) therefore links the relationship between ZANU-PF and rural voters to the universal nature of the norms of reciprocity, that people should help those who help them. In other words, the people who benefitted from land reform cannot bite the hand that feeds them.

For example, Mawere, a second-generation beneficiary of the 1992 land resettlement scheme in Nyarukowa village in the Eastern Highlands of Zimbabwe, confirmed (in an interview on 17 April 2021) that he had obtained land due to ZANU-PF benevolence. This villager spoke of ZANU-PF's intention to resettle people even prior to the 2000 Land Reform Programme. He denied that the 2000 land reform was a political move, since his father had been resettled in the fertile Nyarukowa lands before the advent of strong opposition politics in Zimbabwe. In light of this, the rural peasants consciously vote for ZANU-PF. Hence, their preference for the ruling party in elections is a rational choice which fits well within the social group theory of voting behaviour, where the rural people's choice of party is primarily influenced by their shared interest in land.

Therefore, the peasants have never been passive recipients of changes from above, and they continue to be important social actors in the agrarian transformations taking place at national level (Roberts 1990). In Zimbabwe some peasants and war veterans were at the centre of the mobilised land reform exercise, but others took part in a spontaneous demand for land. Hence for Nyandoro (2012), 'much of the move towards land reform has been mobilised, but some of it has been spontaneous'. Thus, it is inaccurate to attribute the rural electorate's ZANU-PF preference in its entirety to land patronisation. Although Raftopoulos is of the view that ZANU-PF initiated the land reform process, scholars like Alexander (2007), Mazarire (2009), and Moyo and Yeros (2007), argue that the rural people initiated the process by invading the farms while the government simply regularised the process.

The state was held to ransom by pressure coming from the radical peasants who invaded the land and forced the government to give in, as was the case with the Svosve community in Marondera (Mazarire 2009, p. 338). However, after capitulating to pressure by the peasants, the government championed land reform as if that was its own radical policy. In this way, the state 'interrupted' a peasant revolution and co-opted its malcontents to suit ZANU-PF's political contingencies and agenda. In the same vein, Roberts (1990) has noted that throughout history,

peasants have formed the basis of a centralised political order; and in Zimbabwe, ZANU-PF became part of that order. Therefore, land distribution shows how peasants have captured ZANU-PF in order to safeguard their agriculture interests and not the other way round.

*Empowerment Programmes/Projects:
Who Captures Whom, ZANU-PF or the Peasants?*

Notwithstanding the argument about who captured whom, ZANU-PF invariably supports peasant livelihoods which revolve around farming. The party provides irrigation schemes and farm inputs and facilitates the marketing of products for rural dwellers (Raftopoulos 2013, p. 11). These agricultural support schemes were implemented through various programmes which included the presidential agricultural input support scheme launched in 2007. According to Magure (2014, p. 27), the presidential agricultural input support scheme became a vital cog in ZANU-PF's relationship with the people. The party also introduced a popular farm mechanisation programme in 2007 earmarked to empower both communal and commercial farmers. Under the mechanisation scheme, farmers received implements like ploughs, tractors, planters, fuel, scotch carts, cultivators and portable fumigation tanks.

Manyiwa of Nemamwa village in Masvingo Province (interviewed on 18 April 2021) concurred that ZANU-PF offered a tangible empowerment drive to the youth. He revealed that the youth in his village have been receiving loans to boost piggery projects since 2008. For Manyiwa, handouts from ZANU-PF were not for campaigning purposes since they came throughout the year even when there were no elections, while people in his village heard of the MDC only during election time. However, giving food aid and other handouts throughout the year can be seen as pre-campaigning for forthcoming elections. Although the ruling party sometimes hijacked state resources to implement the supporting initiatives for these peasant economies, no other opposition political party has been able to support rural life to the same extent as ZANU-PF. Hence, the party which obstructed the opposition from doing the same became a darling of the rural populace before, during and after elections.

ZANU-PF empowerment policies also appealed to artisanal miners and the informal mining sector in rural areas. The land redistribution programme created avenues for small-scale gold miners who had access to land formerly controlled by monopolistic commercial white farmers and miners (Moyo 2011, p. 502). Having access to mining land, the artisanal miners further benefited from the government's relaxation of laws that prohibited illegal mining. Even in the presence of statutory instruments and laws which prohibited informal mining,

the ZANU-PF government sometimes cast a blind eye to the activities of the informal miners. In 2013 the government reversed its 2008 policy of clamping down on illegal mining (Raftopoulos 2013, p. 11), as efforts at the formalisation of the informal small-scale artisanal mining sector were under way. These supportive conditions to promote informal mining burnished the image of ZANU-PF as a party responsive to the people's needs. Spiegel (2017, p. 102) notes that ZANU-PF continues to have political dominance in mining districts such as Filabusi, Insiza, Umzingwani, Chegutu, Kadoma, Shamva and Mazoe. That dominance gave the party supporters a monopoly over mining claims. In order to safeguard their illicit artisanal mining livelihoods, rural miners voted consciously for ZANU-PF in the 2013 elections, as this was the only guarantee for the security and protection of their small mineral claims.

The concept of community-share ownership is another aspect introduced by the ruling party, which supported peasants in rural areas who as a result consciously preferred ZANU-PF in elections. Mugabe launched many community-share ownership schemes around the country. These schemes were prominent in the Midlands Province and other places along the great dyke. In an interview on 29 April 2021, war veteran Chipfunyise revealed that ZANU-PF was supporting them in the War Vets Act, a piece of legislation which will guarantee economic empowerment for the war vets in the mining and agriculture sectors. These empowerment schemes increased ZANU-PF's popularity and made it easier for the party's parliamentary candidates in mineral-rich areas to campaign for votes.

ZANU-PF has also played an important part in the educational sector for the benefit of the rural people. The government's rural education policy made education accessible at affordable fees for the peasants, compared to expensive urban education. Primary education in marginalised areas was mainly free, although parents paid levies in the form of a building fund and sports fee (Kanyongo 2005, p. 67). Parents were thus required to pay nominal fees and schools were not allowed to send fee defaulters away. Further, the Presidential Scholarship Programme, which offered disadvantaged youths from rural areas the opportunity to enrol in international universities, is also among the popular educational initiatives by the ZANU-PF government. Tanaka, a veterinary officer in Macheke confirmed on 18 April 2021 that she benefited from the War Vets' education scheme by joining the ZANU-PF War Vets' Children Association which had the responsibility of educating war veterans' children. She felt that her family was indebted to the scheme and the party since they had provided college school fees for her and her three siblings, after they had been orphaned at a tender age. There are not many opposition welfare programmes of a similar nature. Therefore, the neo-liberal rhetoric of opposition politics which does not believe in welfarism scares the peasant voters who end up supporting ZANU-PF to receive free social services.

In an interview on 29 April 2021, Mundawarara (an MDC supporter), explained and complained about the MDC's failure to use the gospel of empowerment to attract voters. Mundawarara believes that the name MDC speaks of democratic struggles, but does not encompass empowerment values in the way the Economic Freedom Fighters (EFF) opposition party in South Africa does. He argued that people do not 'eat' democracy but want livelihoods that emerge from economic empowerment. Hence, in order to appeal to the rural masses, the MDC party should focus not only on democracy but also on economic empowerment for economically disadvantaged people.

In the context of the benefits that have accrued to the rural populace and the relevance of ZANU-PF to a peasant agriculture-based economy, it can be argued that the majority of rural dwellers are those who have actually captured ZANU-PF and have been using the party to support their own agriculture-based livelihoods. Therefore, because the neoliberal urban dweller views ZANU-PF as a party of villains that failed to provide public amenities, rural dwellers hold it in high regard. In fact, some pro-opposition politicians, scholars and MDC supporters have universalised urban needs but have ignored the socio-economic needs of the peasantry who constitute almost 70% of Zimbabwe's population.

The Legacy of Liberation War on Voter Preferences

ZANU-PF is generally viewed as the party which untied the chains of colonialism from the rural dwellers, and the rural electorate voted for it because of the legacy of the liberation war. Most people in the rural areas participated directly in the liberation war. Although the urbanites took part indirectly and also directly through acts of arson, resistance and opposition to colonial rule, ZANU-PF conveniently and erroneously accuses urban dwellers of betrayal and of not having participated in the liberation struggle in the national interest. According to Rwodzi (2018), people who were not interested in joining the liberation struggle chose either to remain in urban environments or migrated to the urban areas. Because Zimbabwean elections were regarded as a product of nationalism which brought independence (Ndlovu-Gatsheni 2012), the majority of residents in rural areas view ZANU-PF as the custodian of peace and liberty. Therefore, they consciously voted for ZANU-PF in elections, presumably in order to preserve their liberty.

Nationalist historians such as Bhebe (1999) and Ranger (1985) argue that the liberation struggle enjoyed popular support among the rural masses and was based on a socialist ideology whereby peasants voluntarily supported the liberation fighters. This partly explains the relationship between ZANU-PF, as the party which fought for liberation, and the rural population as a people who supported the struggle for liberation. During election campaigns, rural people

therefore felt intimidated by new candidates from opposition political formations who were not from their locality, believing that they were foreign agents. Thus, in the rural dwellers' view, external interference (real or perceived) would reverse the gains brought by the liberation struggle and independence. The MDC in particular was seen as externally funded and associated with foreign support; and it was alleged that the party wanted to bring back colonialism and violence in the rural areas which had experienced the worst horrors of war during the struggle for independence. Those voters with memories of the war constitute the majority of the elderly people who have retired to their rural homes. For instance, in the 2018 election, fewer than 20 000 elderly people resided in urban Harare and Bulawayo (ZEC b 2018). ZANU-PF presents itself as the custodian of the sovereignty of the country. In many rural quarters of Zimbabwe ZANU-PF has been viewed as such. However, neoliberal urban scholars and politicians sometimes fail to acknowledge the agency of rural people who were influenced by the war in making independent political choices and voting for a political party of their choice, in this case a party with war credentials.

ZANU-PF's communist characteristics during the liberation struggle blended in well with the peasantry's organisational structures characteristic of Zimbabwe's rural communities, and the party continued to use communist structures after the war as a rallying point for elections. The party's socialist structures seem to incorporate every individual from the grassroots level to the party executive. The grassroots structures, created during the liberation struggle, still existed in post-colonial rural communities in Zimbabwe where ZANU-PF continued to dominate and used these structures for rural political indoctrination. Socialist structures which start from village level 'cells' promote participation of every individual in the political processes. This is an advantage ZANU-PF has enjoyed in the rural areas over the opposition MDC and other opposition parties since 1980.

The MDC did not have such effective structures. Raftopoulos (2013, p. 15) concurs by arguing that undeveloped organisational structures were some of the major weaknesses of the MDC. Opposition political parties in Zimbabwe have generally failed to create grassroots structures in rural areas; hence, they were not guaranteed support from rural voters. In 2020 the MDC-Alliance (MDC-A) leader, Nelson Chamisa, admitted that his party was failing to attract the rural voter and therefore the MDC-A was concentrating on luring the urban voter (Mhlanga 2020).

In the main, the MDC did not consider rural politics to be different from urban politics where ideologies are shared through rallies. In rural areas politics is intertwined with societal structures and takes place in everyday life. This partly explains ZANU-PF's appeal in the rural areas. For some of the country's rural

areas, ZANU-PF has become more a way of life than a political party. Because of the party's grassroots structures established during the liberation war, rural voters either consciously voted for, or felt politically obligated to vote for ZANU-PF, which appealed to their liberation consciousness. In instances when rural people were involved in election violence, they were conscious of their actions.

Violence Consciousness

ZANU-PF has been indisputably involved in election violence and there is overwhelming statistical evidence (in Figure 1 below) to illustrate the violent history of the party. Scholars such as Kriger (2013) have cited violence as being imposed by ZANU-PF on the masses as an election-winning strategy; but Ndlovu-Gatsheni (2012) explains how historical experiences have inculcated a violent culture among rural voters. He observes that colonialism and the liberation struggle ushered in a violent tradition among Zimbabweans. Violence became inherent in the culture and was unleashed during elections to settle feuds and even old scores within the society.

In an interview on 12 October 2020 in Chiota communal lands, Nyamasvisva, a school security guard, spoke of how he enjoyed beating up people from neighbouring villages, and at the same time revenging inter-family feuds which spanned decades. In a study of violence in rural areas, Jonga (2013) indicates that rural poverty and stratification were major drivers of violence. According to Jonga, it seems that the rural poor were jealous of the lives of those better-off than themselves, and this translated into violence and the destruction of property during elections. The ordinary, poor villagers sometimes killed friends and family for the sake of money while at other times they were interested in looting (Jonga 2013). The perpetrators of violence often enjoyed impunity through presidential pardons and amnesties. Kriger (2005) cites an example where on 6 October 2000, the Government of Zimbabwe gazetted an amnesty for politically motivated crimes.

The majority of the perpetrators of violence in Zimbabwe are non-state actors (51.2%), and supporters of ZANU-PF, as well as war veterans (RAU 2021). State actors, the police (ZRP), the army (ZNA), and the intelligence service (CIO) allegedly also account for a substantial number of the perpetrators (22.7%) according to RAU (2021). Thus, the empirical evidence over the period from 1998 to 2018 (illustrated in Figure 1) supports the claim that Zimbabwe sometimes experiences violence during elections. However, it is important to stress that this must be seen in the context of a prolonged struggle for political power between the two main political parties, ZANU-PF and the MDC.

| Province | Violence % |
|---------------------|------------|
| Bulawayo | 5.4 |
| Harare | 39.4 |
| Manicaland | 10.2 |
| Mashonaland Central | 9.2 |
| Mashonaland East | 10.1 |
| Mashonaland West | 9.5 |
| Masvingo | 5.3 |
| Matabeleland North | 2 |
| Matabeleland South | 1.5 |
| Midlands | 7.4 |

Source: RAU (2021)

Figure 1: Frequency of violent events by province in Zimbabwe's elections, 1998 to 2018

The startling finding in Figure 1 is the high frequency of violent events in Harare over the 20-year period. Not even the combined frequencies (28.8%) of the three Mashonaland Provinces, anecdotally seen as the most violent during elections, approach the frequency of violations in Harare. In addition, the frequency of events in the southern half of the country – Bulawayo, Matabeleland North and Matabeleland South – is very low, less than 9% of the total. However, the traditional heartland of ZANU-PF support, Manicaland, and the three Mashonaland Provinces, Masvingo and the Midlands, jointly exceed Harare, by 52% as opposed to 39%.

ZANU-PF youths and war veterans were among the groups associated with violence during election times, but they were pardoned. Tatenda, a school leaver and a farmer in Pasipamire Village in Chiota, was interviewed on 15 July. He laughed when looking back at how he enjoyed bullying and beating his former teachers during the 2008 elections as a form of revenge for the punishment they had given him for being mischievous at school. His account fits in well with Kriger's assertion that the unemployed youth were the leading perpetrators of violence during the 2000 elections. This shows that most of the perpetrators of political violence were not being used by ZANU-PF against their will, but consciously or knowingly joined the ZANU-PF militia to satisfy their own violent tendencies, without facing any legal consequences.

Low-level and poor quality education has also been associated with violence in the rural areas. According to Jonga (2013), many of the people involved in violence in Mutoko and Uzumba-Maramba-Pfungwe did not even finish primary school, and this group was the most vicious. It has been argued therefore that such villagers preferred ZANU-PF because it gave them the opportunity to unleash violence on their adversaries during election time without facing any consequences. Their electoral consciousness and voting preferences in Zimbabwe's elections are thus found to tilt towards a party some people perceived to offer them protection whenever they needed it.

Contrary to these sentiments, other people in rural areas believed that violence originated in the MDC and saw their mandate being to defend their area against the MDC's allegedly violent characteristics and corruption. In an interview on 18 April 2021, Manyiwa and Takabvirakare of Masvingo pointed out that the MDC is known for violence and corruption in Harare, and villagers did not want members of MDC to export this to their rural homes. They blamed the MDC for poor living conditions in urban centres and vowed that they would do whatever was necessary to keep the malign influence of the MDC away from their territories. Although Manyiwa and Takabvirakare's perception of the MDC might have been influenced by the state-controlled media, the interview revealed that the two interviewees were conscious of what they did and did not want in their community.

CONCLUSION

The article concludes that the rural peasants were neither as passive or captured as they had been portrayed by anti-ZANU-PF liberal scholars and opposition political sympathisers. It claims that pro-opposition scholarship has been blinded by urban bias and has overlooked what drives the rural populace and makes them blend in with ZANU-PF. There seems to be a reciprocal gesture in which rural political actors obtain their needs from ZANU-PF and in turn feel obliged to vote for the party in elections. In a country beset by an unabating economic crisis, it can be hard to understand why ZANU-PF continued to win elections. Although the party is notorious for allegedly using unorthodox strategies to win elections, it is important to know that 67% of the population in Zimbabwe consists of peasant economies which require little in the form of modern support from the government. Hence, not every rural citizen is as aggrieved as the urban dweller.

Rather than viewing the rural voter as being captured by ZANU-PF, this article thus views rural voters as having captured ZANU-PF to sustain their peasant agrarian economies. Radical peasants, for example, forced the ZANU-PF government to concede to the land reform programme and relax mining laws to favour artisanal miners. In this case, ZANU-PF can be viewed as a captive of the

rural voters. Clearly, most ZANU-PF structures and policies favoured the rural populace by distributing free farming inputs (e.g., seed and fertilizer) and other social services like education. People in the rural areas also enjoy community share ownership schemes where big mines set aside financial resources which are enjoyed by communities around them, although these are sometimes looted. Since most of the mines are in the rural areas, it is the rural residents who benefit the most and thus they have been voting for ZANU-PF in elections between 1980 and 2018.

The paper has demonstrated that numerous factors influence voter preferences in Zimbabwe, but to a certain extent violence also plays a part. Some rural residents hide behind ZANU-PF to unleash violence and enjoy amnesty after committing atrocities during election periods. The article thus argues that the perpetrators of violence in rural areas are always conscious of their actions and voting preferences. The rural population apparently uses ZANU-PF to protect the benefits they have received related to peasant livelihoods and entitlements. Therefore, as the majority in Zimbabwe, rural dwellers both reflect and support the continued victory of ZANU-PF in Zimbabwe's elections, using their strong grassroots social structures. In contrast, the absence of grassroots social structures in the MDC and the lack of support in other parties for peasant agriculture is behind the failure of opposition political parties to gain support and make political inroads in the rural areas. Although it is difficult for the opposition parties to penetrate the rural areas due to political violence, their urban bias has contributed to their loss in previous elections in Zimbabwe. However, rural electorate consciousness and preference for the ruling party, regardless of violence, is behind the success of ZANU-PF in the rural electoral constituencies, as urban voting preferences during elections tend to favour the opposition.

----- REFERENCES -----

- Aiba, J 2002, 'Reviewing the theories of voting behaviour', *Memoirs of Nara University*, vol.31, pp. 283-304.
- Alexander, J 2007, *The unsettled land: state making and the politics of land in Zimbabwe 1893-2003*, James Currey, Oxford.
- Alexander, J & McGregor J 2013, 'Introduction: Politics, patronage and violence in Zimbabwe', *Journal of Southern African Studies*, vol. 39, no. 4, pp. 749-763.
- Bhebe, N 1999, *ZAPU and ZANU guerrilla warfare and the Evangelical Lutheran Church in Zimbabwe*, Mambo Press, Gweru.
- Boone, C & Kriger, N 2010, 'Multiparty elections and land patronage: Zimbabwe and Côte d'Ivoire', *Commonwealth and Comparative Politics*, vol. 48, no. 2, pp. 173-202.

- Bratton, M & Masunungure, EV 2018, 'Heal the beloved country: Zimbabwe's polarized electorate', *Afrobarometer Policy Paper*, no. 49, pp. 1-18.
- Commonwealth 2018, 'Report of the Commonwealth observer group: Zimbabwe harmonised election 2018', Available: <https://www.eisa.org/pdf/zim2018commonwealth0.pdf> (Accessed 11 February 2020).
- Filer, JE, Kenny, LW & Morton, RB 1993, 'Redistribution, income, and voting', *American Journal of Political Science*, vol.37, no.1, pp. 63-87.
- Frescura, F 1980, 'The development of rural vernacular architecture in southern Africa', MA dissertation University of Witwatersrand South Africa.
- Good, K 2002 'Dealing with despotism: The people and the presidents', In H Melber (ed), *Zimbabwe's Presidential elections: evidence, lessons and implication*, Nordiska Afrikainstitutet, Uppsala.
- Gregory, M 1981, 'Zimbabwe 1980: Politicisation through armed struggle and electoral mobilisation', *Journal of Commonwealth and Comparative Politics*, vol. 19, no. 1, pp. 62-94.
- Harding, R 2010, 'Urban-rural differences in support for incumbents across Africa', Afrobarometer working paper 120, Available:<http://afrobarometer.org/sites/default/files/publications/f> (Accessed 3 December 2020).
- Human Rights Watch 2008, 'Bullets for each of you: State-sponsored violence since Zimbabwe's March 29 elections', Human Rights Watch, New York.
- Jonga, W 2013, 'Reasons making ZANU-PF party in Zimbabwe resort to violence', Available: <http://www.papers.ssm.com> (Accessed 17 May 2020).
- Kanyongo, G 2005, 'Zimbabwe's public education system reforms: Successes and challenges', *International Education Journal*, vol. 6, no. 1, pp. 65-74.
- Koter, D 2013, 'Urban and rural voting patterns in Senegal: the spatial aspects of incumbency', *The Journal of Modern African Studies*, vol. 51, no. 4, pp. 653-679.
- Kruger, N 1992, *Zimbabwe's guerrilla war: Peasant voices*, Cambridge University Press, Cambridge.
- Kruger N 2003, *Guerrilla veterans in post-war Zimbabwe: Symbolic and violent politics, 1980-1987*, Cambridge University Press, Cambridge.
- Kruger, N 2005, 'ZANU (PF) Strategies in general election, 1980-2000: Discourse and coercion', *African Affairs*, vol. 104, no. 414, pp. 1-34.
- Laakso, L 2003, 'Opposition politics in independent Zimbabwe', *The Online Journal for Quarterly African Studies*, vol. 7, no. 2, pp. 1-19.
- Laakso, L 2007, *Insights into electoral violence in Africa*. In M Basedau, G Erdmann & A Mehler (eds), *Votes, money and violence: Political parties and elections in sub-Saharan Africa*, Nordic African Institute, Uppsala.
- Magure, B 2014, 'Land indigenization and empowerment: Narratives that made a difference in Zimbabwe's 2013 elections', *Journal of African Elections*, vol. 13, no. 2, pp. 17-48.

- Mass Public Opinion Institute 2005, 'Zimbabwe elections 2005: Post-parliamentary survey', Available: report.www.mpoi.org (Accessed 10 June 2020).
- Masunungure, E 2014, 'The "menu of manipulation" and 2013 Zimbabwe Elections: towards explaining the technical knockout', *Journal of African Elections*, vol. 13, no. 2, pp. 72-94.
- Mazarire, G 2009, 'A social and political history of Chishanga: South-central Zimbabwe c.1750-2000', PhD thesis, History Department University of Zimbabwe, Harare.
- Mhlanga, B 2020, 'MDC tackles ZANU-PF rural hegemony', *Newsday*, 24 February, Available: <http://www.newsday.co.zw/2020/02/mdc-tackles-za> (Accessed 1 May 2021).
- Moyo, J 2011, 'Elections inevitable this year, New Zimbabwe', Available: <http://www.newzimbabwe.com/news-4424-Elections+inevitable+this+year/news.aspx> (Accessed 2 August 2011).
- Moyo, S & Yeros, P 2007, 'The Radicalised State: Zimbabwe's Interrupted Revolution', *Review of African Political Economy*, vol. 34, no. 111, pp. 103-121.
- Ndlovu-Gatsheni, S 2012, *Elections in Zimbabwe: A recipe for tension or a remedy for reconciliation*, Institute for Justice and Reconciliation, Cape Town.
- Nyandoro, M 2012, 'Zimbabwe's land struggles and land rights in historical perspective: The case of Gowe-Sanyati irrigation (1950-2000)', *Historia*, vol. 57, no. 2, pp. 298-349.
- Raftopoulos, B 2013, 'The 2013 elections in Zimbabwe: The end of an era', *Journal of Southern African Studies*, vol. 39, no. 4, pp. 971-988.
- Ranger, T 1985, *Peasant consciousness and the guerrilla war in Zimbabwe*, Zimbabwe Publishing House, Harare.
- RAU 2021, Zimbabwe Political Violence and Elections, Available: https://kubatana.net/wpcontent/uploads/2018/04/rau_zimbabwe_political_violence_elections_180404.pdf (Accessed 8 May 2021).
- Roberts, BR 1990, 'Peasants and proletariats', *Annual Review of Sociology*, vol. 16, pp. 353-377.
- Rwodzi, A 2018, 'Constraints on multi-party democracy in Zimbabwe opposition politics and ZANU-PF (1980-2015)', PhD thesis University of KwaZulu Natal, Durban.
- Satiya, ON 2018, 'An analysis of the factors that influence voting behaviour in Zimbabwe', BA Dissertation, Midlands State University.
- Scott, J C 1976, *The moral economy of the peasant: Rebellion and subsistence in southeast Asia*, Yale University Press, New Haven.
- Sithole, M & Makumbe, J 1997, 'Elections in Zimbabwe: The ZANU (PF) hegemony and its incipient decline', *African Journal of Political Science*, vol. 2, no. 1, pp. 122-139.

- Sithole, M 1986, 'The general elections 1979–1985', in I Mandaza, ed, *Zimbabwe: The political economy of transition 1980-1986*, Codesria, Dakar.
- Southall, R, Slabbert, V 2013, 'How and why ZANU-PF won the 2013 Zimbabwe elections', *Strategic Review for Southern Africa*, vol. 35, no. 2, pp. 135-151.
- Spiegel, S J 2017, 'EIAs, power and political ecology: Situating resource strategies and the techno-politics of small-scale mining', *Geoforum*, vol. 87, pp. 95-107.
- The Guardian* 2008, 'This is no election, this is brutal war', 23 June, Available: <http://www.theguardian.com/world/2008/june/22/zimbabwe> (Accessed 1 May 2021).
- The Guardian* 2013, 'Why Robert Mugabe scored a landslide in Zimbabwean election', 5 August, Available: <http://www.theguardian.com/world/2013/august/robert-mugabe-election-zanu-pfpapers> (Accessed 1 May 2021).
- The Herald* 2021, 'MDC-A's failure-bound foray the countryside'.
- The Herald* 2021, 'Zanu-PF Youth League executive election preparations in full swing'.
- Tomaselli, K & Mhlanga, BS 2012, *Cultural tourism: Rethinking indigeneity*, Brill, Boston.
- Wahman, M & Boone, C 2018, 'Captured countryside? Stability and change in sub-national support for incumbent parties', *Comparative politics*, vol.50, no. 2, pp. 189-216.
- ZEC 2017, 'Voice, choice and access to information: Baseline study on gender equity in the electoral process in Zimbabwe'.
- ZEC 2018a, 'Harmonised election report', Available: <https://www.zec.org.zw/pages/election-Results> (Accessed 28 April 2021).
- ZEC 2018b, 'European Union Election Observation Mission: Final report, Zimbabwe harmonized elections', Available, <https://www.zec.org.zw/pages/election-results> (Accessed 28 April 2021).
- ZIMSTAT 2017, *Inter-censal demographic survey*.
- ZIMSTAT 2012, *Zimbabwe population census report*.
- ZIMSTAT 2015, *Labour force survey*, Harare.